SUPREME COURT OF THE UNITED STATES.

No. 94.

GEORGE W. PHILLIPS, PLAINTIFF IN ERROR,

vs.

JOHN S. PRESTON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

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J. & G. S. GIDEON, printers.

Circuit court of the United States, ninth circuit, in and for the eastern district of Louisiana.

Be it remembered that, on this 16th February, 1841, to the circuit court of the United States, for the eastern district of Louisiana, came John S. Preston, by his attorneys Preston & Peyton & Smith for said district, and filed the following petition.

Petition.

To the honorable circuit court of the United States for the ninth circuit, eastern district of Louisiana, the petition of John S. Preston, who is a citizen of the State of South Carolina, residing in the town of Columbia in said State, respectfully shews:

That by an act executed before Louis T. Caire, esq., notary public, in the city of New Orleans, on the 17th day of March, 1837, Robert R. Barrow, a citizen of the State of Louisiana, sold to Samuel J. Carr, also a citizen of said State, a plantation, situated in the parish of Point Coupee, in said State, having thirty-six arpents front on the Mississippi river, by the ordinary depth of forty arpents, bounded on one side by the land of William Taylor, and on the other side by land of Perrie Louis L. Hermite, with all its appurtenances, stock, and implements of husbandry. Also, fifty-two head of slaves on the plantation, and belonging thereto. Also, a tract of land, situate in the parish of West Feliciana, designated as lot number seven, measuring three hundred and twenty-six superficial arpents, bounded by lots numbered six and eight, fronting the Mississippi river, about two miles below the mouth of the Bayou Sara.

Your petitioner shews that, in part payment of said property, the said Samuel J. Kerr gave his vendor, Robert R. Barrow, six promissory notes, bearing even date with the act of sale subscribed by him to the order of your petitioner, and endorsed by your petitioner, and by George W. Phillips, who is a citizen of the State of Louisiana, residing in the parish of Assumption.

Your petitioner alleges that it was perfectly understood and agreed, between him and the said George W. Phillips, in endorsing said notes, that, although each of them was responsible as endorsers for the whole amount of said notes, they were, between themselves, equally responsible; and that was expressed in the act of sale itself, with the assent and concurrence of said Phillips, and which the said notes were identified by the ne varietur of the notary. Said notes were made payable at the Union Bank of Louisiana, and the amount and terms of payment are as follows:

A note, for the sum of nineteen thousand one hundred and thirty five dollars twenty-five cents, payable on the first day of March, eighteen hundred and thirty-nine - - - - - - - -	$19,135 25
A note, for twenty thousand two hundred forty-two dollars twenty-four cents, payable on the first day of March, eighteen hundred and forty - - -	20,242 24
A note, for the sum of twenty-one thousand three hundred forty-nine dollars and twenty-three cents, payable on the first day of March, eighteen hundred and forty-one - - - - - -	21,349 23
A note, for the sum of twenty-two thousand four hundred fifty-six dollars twenty-two cents, payable on the first day of March, eighteen hundred and forty-two -	22,456 22
And, finally, a note, for the sum of twenty-three thousand five hundred and sixty-three dollars and twenty-one cents, payable on the first day of March, eighteen hundred and forty-three - - - - -	23,563 22
Making together an aggregate sum of one hundred and twenty-four thousand seven hundred and seventy-four dollars and forty-one cents - - - - -	$124,774 41

And to secure the payment of said notes, the plantation above described, and all its dependencies and appurtenances, the slaves and tract of land, in the parish of West Feliciana, were specially mortgaged by the purchaser, Samuel J. Carr, to his vendor, Robert R. Barrow.

Your petitioner shews the three first of said notes have become due, and were not paid by the drawer, Samuel J. Carr, but were protested for non-payment; and your petitioner was obliged to pay and take up the two first of said notes, amounting to thirty-seven thousand one hundred and sixty-three dollars and fifty-one cents, with interest from their maturity respectively, and costs of protest.

Your petitioner further shews that, on the third note which became due on the fourth day of March, 1840, for the sum of twenty thousand two hundred and forty-two dollars twenty-four cents, the vendor, Robert R. Barrow, caused the aforesaid plantation, appurtenances, stock, and agricultural implements, and all the said slaves, to be seized and sold according to law, by virtue of the special mortgage reserved by him to secure the payment of the same.

And that the whole of the said property being sold, subject to the payment of three remaining notes not yet matured, was adjudicated by the sheriff of the parish of Point Coupee, on the 15th day of August, 1840, for the sum of sixty-seven thousand five hundred dollars, being barely enough to pay the three last notes aforesaid.

And your petitioner has been compelled to take up and pay the said third note on which the order of seizure and sale was issued.

Your petitioner shews that the tract of land in West Feliciana was seized and sold for other debts of Samuel J. Carr; and that no part of the proceeds could be obtained for the payment of the price of the same. He further shews that said Carr is insolvent, and he has no recourse for the amount he has paid.

He alleges that, by virtue of his agreement with said George W. Phillips, the latter is bound and liable to pay to him the one-half of all that he has paid, being twenty-eight thousand seven hundred and two dollars and eighty-seven cents, with legal interest on nine thousand and fourteen dollars and thirteen cents from the fourth day of March, 1838, and like interest on nine thousand five hundred and sixty-seven dollars and sixty-two and one-half cents from the 4th day of March, 1839. And on ten thousand one hundred and twenty-one dollars, from the 4th day of March, 1840, with half the costs of protests, and being so liable, neglects and refuses to pay the same, although often thereto amicably requested.

Wherefore your petitioner respectfully prays the premises, annexed notes and protests, and authenticated copy of act of sale being considered, that the said George W. Phillips may be cited to appear and answer this petition, and after due proceedings had, may be adjudged to pay to your petitioner the amount of twenty-eight thousand seven hundred and two dollars and eighty-seven cents, being one half of the amount of three notes, for the payment of which he is entitled to recover from the said George W. Phillips, with legal interest on the sum of nine thousand and fourteen dollars and thirteen cents from the 4th day of March, 1838, and on the sum of nine thousand five hundred and sixty-seven dollars and sixty-two and ½ cents, from the 4th day of March, 1839; and on the sum of ten thousand one hundred and twenty-one dollars and twelve cents, from the 4th day of March, 1840, the costs of protests and costs of this suit; and that your honor would afford all other relief which justice, equity, and the nature of the case may require.

As in duty bound, &c.,

(Signed) PEYTON & SMITH,
ISAAC T. PRESTON.

Protest annexed to petition.

UNITED STATES OF AMERICA, *State of Louisiana*:

By this public instrument of protest, be it known, that on this thirtieth day of March, in the year one thousand eight hundred and thirty-nine, at the request of Louis Janin, esq., of this city, of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the Union bank of Louisiana, in this city, where it is made payable, and demanded payment of its contents, and was answered by the book-keeper, that the same could not be paid.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth

or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note.

Thus done and protested, in the presence of John Cragg and Leonce Hebrand, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed, A. MAZUREAU, *Notary Public.*

Signed, A. MAZUREAU, *Notary Public.*

J. CRAGG,

L. HEBRARD.

Dollars. $18,028 $\frac{26}{100}$ *New Orleans, March 17th*, 1837.

On the first day of March, eighteen hundred and thirty-eight, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of eighteen thousand twenty-eight dollars twenty-six cents. Value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, Geo. W. Phillips, Robert R. Barrow.

Ne varietur, in conformity with an act bearing a mortgage, passed this day before me, New Orleans, March 17, 1837.

LOUIS T. CAIRE, *Notary Public.*

I, the undersigned notary, do hereby certify, that the parties to the note, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively, in the manner following, viz.: the notices for John S. Preston, Geo. W. Phillips, and Robert R. Barrow, were delivered to Mr. Louis Janin, as holder, who took charge thereof.

In faith whereof, I have hereunto signed my name, together with John Cragg, and Leonce Hebrard, witnesses, at New Orleans, this first day of April, eighteen hundred and thirty-nine.

Signed, A. MAZUREAU, *Notary Public.*

J. CRAGG, L. HEBRARD.

I certify the foregoing to be a true copy of the original protest and certificate recorded in my office, of which it purports to be a copy.

Signed, A. MAZUREAU, *Notary Public.*

New Orleans, 20th April, 1841.

Copy of note annexed to protest.

Dollars. $18,028 $\frac{26}{100}$ *New Orleans, March 17th*, 1837.

On the first day of March, eighteen hundred and thirty-eight, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of eighteen thousand and twenty-eight dollars twenty-six cents. Value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, George W. Phillips, Robert R. Barrow.

Your petitioner shews that the tract of land in West Feliciana was seized and sold for other debts of Samuel J. Carr; and that no part of the proceeds could be obtained for the payment of the price of the same. He further shews that said Carr is insolvent, and he has no recourse for the amount he has paid.

He alleges that, by virtue of his agreement with said George W. Phillips, the latter is bound and liable to pay to him the one-half of all that he has paid, being twenty-eight thousand seven hundred and two dollars and eighty-seven cents, with legal interest on nine thousand and fourteen dollars and thirteen cents from the fourth day of March, 1838, and like interest on nine thousand five hundred and sixty-seven dollars and sixty-two and one-half cents from the 4th day of March, 1839. And on ten thousand one hundred and twenty-one dollars, from the 4th day of March, 1840, with half the costs of protests, and being so liable, neglects and refuses to pay the same, although often thereto amicably requested.

Wherefore your petitioner respectfully prays the premises, annexed notes and protests, and authenticated copy of act of sale being considered, that the said George W. Phillips may be cited to appear and answer this petition, and after due proceedings had, may be adjudged to pay to your petitioner the amount of twenty-eight thousand seven hundred and two dollars and eighty-seven cents, being one half of the amount of three notes, for the payment of which he is entitled to recover from the said George W. Phillips, with legal interest on the sum of nine thousand and fourteen dollars and thirteen cents from the 4th day of March, 1838, and on the sum of nine thousand five hundred and sixty-seven dollars and sixty-two and $\frac{1}{2}$ cents, from the 4th day of March, 1839; and on the sum of ten thousand one hundred and twenty-one dollars and twelve cents, from the 4th day of March, 1840, the costs of protests and costs of this suit; and that your honor would afford all other relief which justice, equity, and the nature of the case may require.

As in duty bound, &c.,

(Signed) PEYTON & SMITH,
ISAAC T. PRESTON.

Protest annexed to petition.

UNITED STATES OF AMERICA, *State of Louisiana*:

By this public instrument of protest, be it known, that on this thirtieth day of March, in the year one thousand eight hundred and thirty-nine, at the request of Louis Janin, esq., of this city, of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the Union bank of Louisiana, in this city, where it is made payable, and demanded payment of its contents, and was answered by the book-keeper, that the same could not be paid.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth

or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note.

Thus done and protested, in the presence of John Cragg and Leonce Hebrand, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed, A. MAZUREAU, *Notary Public.*

Signed, A. MAZUREAU, *Notary Public.*

J. CRAGG,

L. HEBRARD.

Dollars. $18,028 $\frac{26}{100}$ *New Orleans, March 17th*, 1837.

On the first day of March, eighteen hundred and thirty-eight, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of eighteen thousand twenty-eight dollars twenty-six cents. Value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, Geo. W. Phillips, Robert R. Barrow.

Ne varietur, in conformity with an act bearing a mortgage, passed this day before me, New Orleans, March 17, 1837.

LOUIS T. CAIRE, *Notary Public.*

I, the undersigned notary, do hereby certify, that the parties to the note, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively, in the manner following, viz.: the notices for John S. Preston, Geo. W. Phillips, and Robert R. Barrow, were delivered to Mr. Louis Janin, as holder, who took charge thereof.

In faith whereof, I have hereunto signed my name, together with John Cragg, and Leonce Hebrand, witnesses, at New Orleans, this first day of April, eighteen hundred and thirty-nine.

Signed, A. MAZUREAU, *Notary Public.*

J. CRAGG, L. HEBRARD.

I certify the foregoing to be a true copy of the original protest and certificate recorded in my office, of which it purports to be a copy.

Signed, A. MAZUREAU, *Notary Public.*

New Orleans, 20th April, 1841.

Copy of note annexed to protest.

Dollars. $18,028 $\frac{26}{100}$ *New Orleans, March 17th*, 1837.

On the first day of March, eighteen hundred and thirty-eight, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of eighteen thousand and twenty-eight dollars twenty-six cents. Value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, George W. Phillips, Robert R. Barrow.

I do hereby certify that the mortgage aforementioned has been raised by Louis Janin, esq., per act passed before me, on the thirtieth day of March, eighteen hundred and thirty-nine.

Signed, LOUIS T. CAIRE, *Notary Public.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of March, in the year one thousand eight hundred and thirty-nine, at the request of the Union bank of Louisiana, holder of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the Union bank of Louisiana, in this city, where it is made payable, and demanded payment of its contents, and was answered by the book-keeper, that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note.

Thus done and protested, in the presence of John Cragg and Leonce Hebrard, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed, A. MAZUREAU, *Notary Public.*

Dollars. $19,135 $\frac{25}{100}$. *New Orleans, March 17th*, 1837.

On the first day of March, eighteen hundred and thirty-nine, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of nineteen thousand one hundred thirty-five dollars twenty-five cents. Value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, Geo. W. Phillips, R. R. Barrow.

A true copy of the before mentioned protest, with notary's certificate of notices.

Ne varietur, in conformity with an act bearing a mortgage. Passed this day, before me.

LOUIS T. CAIRE, *Notary Public.*

New Orleans, March 17, 1837.

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of March, in the year one thousand eight hundred and thirty-nine, at the request of the Union bank of Louisiana, holder of the original note, whereof a true copy is on [the] reverse hereof written, I, Adolphe Mazureau, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the Union bank of Louisiana, in this city, where it is

made payable, and demanded payment of its contents, and was answered by the book-keeper that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered for want of payment of the said note.

Thus done and protested, in the presence of John Cragg and George M. Jenkins, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed, A. MAZAREAU, *Notary Public.*
Signed, A. MAZAREAU, *Notary Public.*
J. CRAGG, L. HEBRARD.

Dollars. $19,135. *New Orleans, March* 17, 1837.

On the first day of March, eighteen hundred and thirty-nine, I promise to pay to the order of Jno. S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of nineteen thousand one hundred thirty-five dollars twenty-five cents. Value received.

Signed, S. JNO. CARR.

Endorsed, Jno. S. Preston, Geo. W. Phillips, R. R. Barrow.

Ne varietur, in conformity with an act bearing a mortgage, passed this day before me. LOUIS T. CAIRE, *Notary Public.*
New Orleans, March 17, 1837.

I, the undersigned notary, do hereby certify, that the parties to the note, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz., S. Jno. Carr, West Baton Rouge, Louisiana; Jno. S. Preston, Parish of Ascension, Louisiana. Again, Jno. S. Preston, Columbia, South Carolina; Geo. W. Phillips, Parish of Assumption, Louisiana. Again, Geo. W. Phillips, Parish of Ascension, Louisiana; which notices were by me, notary, put into the post office of this city on the day of said protest.

And on the fifth instant, another notice, for Geo. W. Phillips, was delivered to R. R. Barrow, as holder of said note, together with a notice for himself, as endorser. Another notice, for said Jno. S. Preston, was given to Isaac T. Preston, and yet another for the same was directed to said Jno. S. Preston, New Orleans, Louisiana, and was by me, the notary, put into the post office of this city, this day.

In faith whereof, I have hereunto signed my name, together with John Cragg and Leonce Hebrard, witnesses, at New Orleans, this fifth day of March, eighteen hundred and thirty-nine.

Signed, A. MAZAREAU, *Notary Public.*
J. CRAGG, L. HEBRARD.

I certify the above protest and certificate to be true copies from the original, in my office.

New Orleans, 20th April, 1841.

Signed, A. MAZAREAU, *Notary Public.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth March, in the year one thousand eight hundred and forty, at the request of the Union bank of Louisiana, holder of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the Union bank of Louisiana, in this city, where the same is made payable, and demanded payment of its contents, but was answered by the book-keeper that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of John Cragg and George A. Jenkins, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed, A. MAZUREAU, *Notary Public.*

Dollars. $20,242 $\frac{24}{100}$. *New Orleans,* 17, 1837.

On the first day of March, eighteen hundred and forty, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of twenty thousand two hundred for[ty]-two dollars twenty-four cents. Value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, Geo. W. Phillips, R. R. Barrow.

Ne varietur, in conformity with an act bearing a mortgage, passed this day before me. LOUIS T. CAIRE, *Notary Public.*

New Orleans, March 17, 1837.

A true copy of the before last mentioned protest, with notary's certificate of notices.

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of March, in the year one thousand eight hundred and forty, at the request of the Union bank of Louisiana, holder of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, a notary public in and for the city and parish of New Orleans aforesaid, duly commissioned and sworn, presented the said note at the Union bank of Louisiana, in this city, where it is made payable, and demanded payment of its contents, but was answered by the book-keeper that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest,

and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note.

Thus done and protested, in the presence of John Cragg and George A. Jenkins, witnesses.

In testimony whereof, I grant these presents, under my signature, and the impress of my seal of office, at New Orleans, on the day and year first above written.

Signed, A. MAZUREAU, *Notary Public.*

Signed, A. MAZUREAU, *Notary Public.*

J. CRAGG, GEORGE A. JENKINS.

Dollars, for $20,242 $\frac{24}{100}$. *New Orleans, March* 17, 1837.

On the first day of March, eighteen hundred and forty, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union bank of Louisiana, in this city, the sum of twenty thousand two hundred forty-two dollars twenty-four cents. Value received.

S. JNO. CARR.

Endorsed,—Jno. S. Preston, Geo. W. Phillips, R. R. Barrow.

Filed April 8th, 1839. VALERY LEDOUX, *Dep. clerk.*

Ne varietur, in conformity with an act bearing a mortgage, passed this day, before me. LOUIS T. CAIRE, *Notary Public.*

New Orleans, March 17, 1837.

The undersigned notary *do* hereby certify, that the parties to the note, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written & addressed, dated on the day of the said protest, and served on them respectively in the manner following, viz:

One notice for Jno. S. Preston, directed to him, parish of Ascension, Louisiana; another directed to him, parish of Assumption, La.; a third notice directed to him at New Orleans, La.; a fourth notice directed to him, Columbia, South Carolina. One notice directed to George W. Phillips, parish of Ascension, La.; a second notice directed to said Geo. W. Phillips, Napoleonville P. O., parish of Assumption, La; and one directed to him, New Orleans, La.; were put by me, notary, in the post office of this city on the day of said protest. This morning a notice for J. S. Preston was delivered to himself, whereupon he acknowledged he had already received one. A notice was made for Geo. W. Phillips, and by me delivered to the last endorser, at his own request; and a notice for R. R. Barrow was delivered to himself.

I further certify, that a notice for S. J. Carr, directed to him West Baton Rouge, La., was put by me, notary, in the post office of this city, on the day of said protest.

In faith whereof, I have hereunto signed my name, together with John Cragg and George A. Jenkins, witnesses, at New Orleans, this fifth day of March, eighteen hundred and forty.

Signed, J. CRAGG,
GEORGE A. JENKINS,
A. MAZUREAU, *Not. Pub.*

I certify the foregoing to be a true copy of the original protest and certificate now on record in my office at New Orleans, April 20th, 1841.
(Signed) A. MAZUREAU, *Not. Pub.*

Copy of Sale annexed to petition.—Document C.

UNITED STATES OF AMERICA.
State of Louisiana, city of New Orleans:

Be it remembered, that this day, the seventeenth of the month of March, one thousand eight hundred and thirty-seven, and in the sixty-first year of the independence of the United States of America, before me, Louis T. Caire, notary public, in and for the city and parish of New Orleans, duly commissioned and sworn, and in presence of the witnesses hereinafter named and subscribed, personally appeared Mr. Robert Ruffin Barrow, residing in the parish of Terrebonne, State aforesaid, who declared and said, that he does hereby convey, transfer, abandon, set over, and quit claim, without any exception or reserve, and with substitution and subrogation to his place and stead, unto Mr. Samuel John Carr, residing in the parish of Assumption, State aforesaid, being this day in this city, present, and accepting for him, his heirs and assigns, all and singular the titles, interests, and claims which he, the said Barrow, had, or might have, on the fifteenth day of March, in the year eighteen hundred and thirty-six, or at any time since, and by virtue of the act of sale hereinafter mentioned, in and to—

1st. A certain tract of land or plantation, situated in the parish of Point Coupée, State aforesaid, having thirty-six arpents front on the river Mississippi, by the ordinary depth of forty arpents, bounded on one side by land of William Taylor, and on the other by land of Pierre L. L'hermite, such as the whole now stands, with all and singular the buildings and improvements thereon, sugar-house, negro huts, fences, and without any reserve, together with the work-houses, yokes of oxen, sheep, and all the horned cattle branded thus—S. A., or any other belonging to the plantation, ploughs, carts, wheels, tools of every description, and all and singular the implements of husbandry in use for the cultivation of said plantation; the purchaser declaring that he has a perfect knowledge of the premises, is satisfied thereof, and does not wish a more detailed statement or description thereof.

2nd. Fifty-two slaves now on the premises, and belonging thereto, whose names and ages are as follows, viz:

No.	1	Neptune - - - -	age 36 years.
	2	Reuben - - - -	21 do.
	3	Jerry - - - - -	28 do.
	4	Big Davy - - - -	29 do.
	5	Priestley Engineer, with a sore leg -	22 do.
	6	Beverly - - - -	26 do.
	7	Abraham - - - -	36 do.
	8	Davy - - - - -	26 do.

List of Slaves—Continued.

9	Cesar	age 36 years.
10	Ralph	41 do.
11	Charles, blind of one eye	31 do.
12	Lafleur, with a rupture	36 do.
13	Henry, drowned	26 do.
14	Baptiste	29 do.
15	Tom	31 do.
16	Petit Louis	17 do.
17	Louis Mandinger	32 do.
18	Thomas	41 do.
19	James Crow	16 do.
20	Ralph	11 do.
21	Charles	13 do.
22	Sevire	11 do.
23	Ciprien	6 do.
24	Mary	36 do.
25	Lawretta	13 do.
26	Fanny	20 do.
26	Anny	31 do.
27	Catherine	42 do.
28	Betsy	26 do.
29	Betsy's infant, Betsy Hall	33 do.
30	Polly	21 do.
31	Diana	46 do.
32	Suzanne	26 do.
33	Nancy	27 do.
34	Lucille	24 do.
35	Dorathee, has a child	41 do.
36	Cecile	13 do.
37	Sarah Ann	11 do.
38	Isabella, with a sore leg	41 do.
39	Fanny Bayon, blind in both eyes	23 do.
40	Her child	3 do.
41	Thereze	4 do.
42	Abraham	26 do.
43	Billy Hall	26 do.
44	Andrews	31 do.
45	James	35 do.
46	Joe	22 do.
47	Betsey	20 do.
48	And her two children, one at the breast	
49	The other dead	4 do.
50	Silvy	4 do.
51	Martha	18 do.

3d. His rights, claims, and recourse in warranty for two unsound slaves, named Robert, aged about thirty years, and Edward Congo, thirty-five years, both sold under full guarantee, but who were unsound slaves, and died in consequence thereof. Said rights, claims, and recourse in warranty, are hereby transferred, without any guarantee on the part of Mr. Barrow, and accepted, such as they are, by the said purchaser.

4th. A tract of land, without any improvement, situated in the parish of West Feliciana, designated as lot number seven, measuring three hundred and twenty-six superficial arpents, bounded by lot Nos. eight and six, fronting on the Mississippi river about two miles below the mouth of the bayou Sarah.

The plantation here above described; the forty-two slaves first named, viz: from number one to number forty-two, inclusively; the two unsound slaves; the tract of land last described, and finally the buildings, cattle, utensils; in a word, all the articles of husbandry and animals on the plantation, and thereto belonging, have been purchased by the said Robert Ruffin Barrow from Mrs. Sosthen Allain, per act passed before Alphonse Robin, judge, and ex-officio notary public, in and for the parish of Point Coupee, State aforesaid, on the fifteenth day of March, in the year eighteen hundred and thirty-six, [a] copy whereof, duly certified, has been exhibited to me, the undersigned notary; and the nine slaves last mentioned, to wit, from number forty-three to fifty-one, inclusive, belong to him the said Barrow, by purchase made from sundry persons, whose seals he binds himself to exhibit whenever required so to do; of which statement the purchaser acknowledges himself satisfied. But it is well understood, and agreed upon by the contracting parties, that the nine last mentioned slaves are hereby sold with guarantee of the title of property only, and without any guarantee against the vices and maladies prescribed by law, with substitution and subrogation to his place, and that for any recourse in warranty he might exercise against his vendors, and the vendor of his vendor. To have and to hold the tracts of land, slaves, and premises here above described, unto the said purchaser, his heirs, and assigns, to their proper use and behoof for ever.

This sale is made and accepted for the sum of one hundred and forty-one thousand six hundred [and] ninety-five dollars and sixty-eight cents; in part payment whereof, the said purchaser well and effectually paid in current money of the United States, delivered out of the sight of the undersigned notary and witnesses, the sum of sixteen thousand nine hundred [and] twenty-one dollars twenty-seven cents, to the said R. R. Barrow, the receipt whereof he does hereby acknowledge, and grant a full and complete discharge and acquittance therefrom.

	$16,921 27
And in payment of the balance, the said purchaser handed over to me, the undersigned notary, six promissory notes, bearing even date herewith, subscribed by him, to the order [of] John S. Preston, endorsed by him the said John S. Preston, domiciliated in the parish of Ascension, as first endorser, and by George W. Phillips, domiciliated in the parish of Assumption, as second endorser, it being understood that, although each of the endorsers is responsible for the whole amount of said notes, they are between themselves equally responsible; said notes have been made payable at the domicile of the Union Bank of Louisiana, and their amount and terms of payment are as follows, viz:	
A note for the sum of eighteen thousand twenty-eight dollars twenty-six cents, payable on the first day of March, eighteen hundred and thirty-eight - -	18,028 26
A note of the sum of nineteen thousand one hundred thirty-five dollars twenty-five cents, payable on the first day of March, eighteen hundred and thirty-nine	19,135 25
A note of twenty thousand two hundred forty-two dollars twenty-four cents, payable on the first day of March, eighteen hundred and forty - -	20,242 24
A note of the sum of twenty-one thousand three hundred forty-nine dollars twenty-three cents, payable on the first day of March, eighteen hundred and forty-one - - - - - -	21,349 23
A note for the sum of twenty-two thousand four hundred fifty-six dollars twenty-two cents, payable on the first day of March, eighteen hundred and forty-two -	22,456 22
And, finally, a note of the sum of twenty-three thousand five hundred sixty-three dollars twenty-one cents, payable on the first day of March, eighteen hundred and forty-three - - - - - -	23,563 21
Making, together, an aggregate sum of one hundred forty-one thousand six hundred ninety-five dollars sixty-eight cents - - - - -	$141,695 68

The notes here above described have been signed, ne varietur, by the undersigned notary, to identify them with these presents, and delivered to the vendor, the receipt whereof he does hereby acknowledge.

And to secure the payment of said notes, the plantation above described, and all its dependencies and appurtenances, the slaves, and the tract of land in the parish of West Feliciana, are, and remains, hereby

mortgaged and hypothecated in favor of the vendor or of the bearer of said notes until final payment, hereby consenting said purchaser that the present mortgage be recorded whenever it shall or may be necessary, and binding himself not to sell, alienate or deteriorate the same to the prejudice of *of* the present mortgage.

The contracting parties have moreover declared, that the notes here above described have, at the request of Mr. Barrow, and by mutual consent, being drawn of the same amount, and made payable at the same periods as those subscribed by him to the order of W. R. Barrow, endorsed by him, secured by a mortgage on the premises, and given in payment to Mr. Posthene Allain, his vendor, because he, the said R. R. Barrow, is desirous of substituting the notes received by him this day, in the place and stead of the said notes, in case that said Allain, or the holder or holders of said notes, would consent thereto.

And whereas, on account of the absence of S. Allain, it is impossible to ascertain presently his determination in this respect, and his consent to the substitution of said notes, it has been specially agreed upon, as an express condition of the present sale—

1st. That said notes shall be deposited in the Union Bank of Louisiana, in this city, by the vendor, Mr. Barrow.

2nd. That they shall remain there as a special deposite, until the intention of Mr. Allain, or his legal representative or assigns be clearly understood and made known to the contracting parties.

3rd. That in case the said Allain and his heirs, or the bearer or bearers of said notes, should agree to the change and substitution of said notes, then the mortgage granted in favor of the said Allain shall be raised, because the payment of the purchaser's notes above described is secured, not only on the premises primitively sold, but also on nine slaves sold by these presents.

4th. And, finally, that should the said Allain, or the bearer or bearers of said notes, decline or refuse for an[y] reason or cause soever, to make the exchange here above alluded to, then, and in such a case, the amount of the notes deposited in the Union Bank as aforesaid, as soon as the same shall have been paid by the actual purchaser, his heirs, or assigns, shall be applied to the payment of Mr. Barrow's notes, when the same shall successively arrive at maturity.

The said R. R. Barrow does also by these presents, for and in consideration of the sum of three thousand dollars, to him paid cash in hand by the said Kerr, the receipt whereof he does hereby acknowledge and grant a full acquittance herefrom, sell, bargain, and abandon, unto the said Samuel John Carr, present and acquitting, all the cotton now on the plantation, supposed to be upwards of one hundred bales; but said cotton is sold such as it stands, be the same more or less, the purchaser acknowledging that he has seen the cotton to him presently sold, and is satisfied thereof.

It appearing, from the certificate of the judge and ex-officio recorder of mortgages in and for the parish of Point Coupee, dated on the sixteenth instant, and hereto annexed, that the plantation, the tract of land

in the parish of Feliciana, and the forty-two slaves first mentioned, are subject to the mortgage granted by the said R. R. Barrow, by the act passed before the hon. judge of the parish of Point Coupee, on the fifteenth day of March, eighteen hundred and thirty-six, to secure the payment of seven notes, amounting, together, to the sum of one hundred forty-one thousand six hundred ninety-five dollars sixty-eight cents.

The vendor having exhibited the first note of sixteen thousand nine hundred and twenty-one dollars twenty-seven cents, which he paid when due on the first instant, binds himself to have the said mortgage reduced for the amount of this note, and to protect and guaranty the purchaser from the effect of the balance of said mortgage.

It appears also, from said certificate, that the nine last mentioned slaves, from number forty-three to fifty-one, are free from mortgage in the name of the vendor.

Mr. R. R. Barrow does hereby declare that he is neither tutor nor curator of minors, interdicted persons, or absentees, and that he has never contracted any marriage.

Thus done and passed in the office, at the city of New Orleans, the day, month, and year, aforementioned, in presence of Charles Darcantel and Philippe Lacoste, witnesses thereto required, residing in this city, who have signed with the said appearers and me, the notary, after the reading of this act.

(Signed) ROBERT R. BARROW,
S. JNO. CARR.

CHARLES DARCANTEL,
PHI. LACOSTE.

Collated: LOUIS T. CAIRE, *Not. pub.*

I certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usage of this State. In faith whereof, I grant these presents under my signature, and [L. S.] the impress of my seal of office, at New Orleans, this sixth day of February, one thousand eight hundred and thirty-nine.

LOUIS T. CAIRE, *Not. pub.*

Endorsement on the foregoing act of sale.

Recorded in the parish judge's office of West Feliciana, in mortgage book L, pages 6, 7, 8, and 9, on the 11th September, 1839.

(Signed,) LOUIS T. CAIRE, *Not. pub.*

Citation and marshal's return.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

JOHN S. PRESTON
vs. } No. 784.
GEORGE W. PHILLIPS.

To GEORGE W. PHILLIPS:

You are hereby commanded to summon George W. Phillips, and you George W. Phillips are hereby summoned to comply with the demand

contained in the petition, of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof; which delay is increased one day for every twenty miles the defendant's residence is distant from the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this sixteenth [SEAL.] day of February, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the said United States of America the 65th year.

DUNCAN N. HENNEN, *Clerk.*

Received 17th February, 1841, and same day served a copy of the within citation, together with plaintiff's petition and documents annexed, on George W. Phillips, in person, in the city of New Orleans.

(Signed,) M. MARIGNY, *U. S. M.*
Per WM. K. STILES, *Dy. U. S. M.*

And afterwards, to wit, on the 26th February, 1841, came the defendant, by his counsel L. Janin, esq., and filed the following exception, to wit:

Exception.

To the honorable circuit court of the United States for the ninth judicial circuit eastern district of Louisiana.

The exception of George W. Phillips, a citizen of the State of Louisiana, residing in the parish of Assumption, respectfully shews: that this honorable court is without jurisdiction on the face of the petition; for this, that according to the statements of said petition, the notes sued on were heretofore the property of Robert R. Barrow, a citizen of the State of Louisiana, who could not have sued this respondent as the endorser of said notes in this honorable court, and that the title of the said Barrow in said notes was transferred and assigned by him to the plaintiff, on the plaintiff's paying the same as the first endorser thereof.

Wherefore your respondent prays that this suit may be dismissed, with costs.

(Signed,) LS. JANIN & S. L. JOHNSON,
By LS. JANIN.

And afterwards, to wit, on the 20th April, 1841, the following judgment was recorded, to wit:

This cause came on this day for trial upon the exceptions of the defendant; L. Janin, esq., appearing for the defendant, and Peyton and Smith for the plaintiff; when, after argument therein, it was considered by the court that the exception be overruled.

And afterwards, to wit, on the 20th April, 1841, came the defendant, by his attorney Louis Janin, esq., and filed the following answer:

To the honorable circuit court of the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana.

The answer of George W. Phillips, a citizen of Louisiana, respectfully shews, that he denies all and singular the allegations contained in the plaintiff's petition, and particularly that he ever promised or undertook to be responsible on the notes described, in said petition, in any other capacity except as second endorser after and in default of the plaintiff, or that the said notes ever were duly protested, and notice given to this defendant.

Wherefore, he prays that this suit may be dismissed with costs.

L. JANIN,
Attorney for respondent.

And afterwards, to wit, on the trial of this case, the following testimony was filed.

Testimony taken by consent, this April 23d, 1841.

Document B.

JOHN S. PRESTON,
vs.
GEORGE W. PHILLIPS.

The testimony of Robert R. Barrow, a witness for the plaintiff, who being duly sworn deposeth and saith: being asked by the plaintiff what he knows in relation to an agreement between John S. Preston and George W. Phillips, in relation to their endorsement of certain notes given by Samuel J. Carr to him, on payment of a plantation and slaves in Point Coupee, purchased from him by said Carr, about the 17th March, 1837.

(The counsel of the defendant, Seth Barton, esquire, objecting to the above question, and reserving all legal exceptions.)

The witness says: that he was present at the time the notes were signed, about the 17th March, 1837. Samuel J. Carr, the plaintiff, and defendant, with deponent, met by appointment at the time of the sale, at Caire's office, before whom the act was passed; the act was already prepared when the aforesaid parties met, it having been prepared by the notary, under the directions of witness and said Carr; the notes were also drawn up and ready to be signed, under Carr and witness' directions and instructions, the notes were then handed to the plaintiff to endorse; when about to sign, Mr. Preston observed that he thought those notes were to have been drawn to the order of Phillips the defendant; Mr. Carr replied, that he did not know that it would make any difference. And thereupon, Col. Preston turned round, and addressing himself to Col. Phillips, the defendant, said he supposed it made no difference, and said he wished it particularly understood between them, that in case Carr should fail to pay the notes, and the endorsers compelled to pay them, that he (Phillips) and Preston, should be equally bound, and share alike in the loss, and that he Preston, wished it so stated in the act.

After this conversation, Col. Preston turned to Mr. Caire the notary, and remarked, that he wished it noted in the act, that the endorsers should be bound alike on failure of Carr. The notary then put down on paper the exact words that Col. Preston dictated; all the parties were near each other, and participating more or less in the conversation; after this, Col. Preston and Col. Phillips endorsed the notes, and handed them over to the notary; Col. Preston endorsed first, and Col. Phillips next: and instructions were given to the notary Caire, to draw up a new act, inserting the clause aforesaid, as regards the equal liability of the endorsers; and then to identify the notes with the act, the clause was added in the new act, and witness, when his attention was called to it by Mr. Caire, objected to its insertion, because, as he then thought, it made the endorsers liable to him for only their half. Mr. Caire called upon an attorney-at-law, whose name witness does not remember, to explain it, and thereupon witness was satisfied that it did not affect him, but only related to the respective liabilities of the endorsers. The act was not signed at the time the notes were given, but was signed at a different time on that day, or the day next, but he cannot remember. Witness recollects the conversation very distinctly, as it was impressed on his mind at the time, and has frequently thought of it since.

Being shown the copy of the act annexed to the petition, and the clause at the top of the page, says, they are the same referred to by him. The three notes marked A, B and C, filed with this deposition, are part of the consideration of the sale; Col. Preston took up three of the notes, A, B and C, and paid them after protest, interest and all charges, which payment was made before this suit was instituted. The tract of land in West Feliciana, mortgaged to secure the payment of these notes, was seized and sold to pay prior mortgages of said Carr, and consequently, there was nothing to come from that land to pay this debt of Carr's, for the plantation sold as aforesaid; this tract was wood land; Col. Preston has paid the notes which have matured, and has assumed the balance due, he having purchased in the property mortgaged, to secure the payment of the notes aforesaid.

The defendant, by S. Barton, his attorney, objects to the whole of the foregoing deposition of the witness, as illegal and incompetent; and specially to all such parts of it, as is hearsay or secondary proof; and specially, also, to all such parts of it as go to vary, or contradict, or explain the written testimony, to which the witness refers; and particularly such parts as tend to prove any thing against, or beyond, the authentic act of sale, on file in this cause, and insisting on such objections, (to be urged on trial,) and waiving no part thereof.

Cross examines the witness, under the above reservations.

Witness never had the act of sale referred to, recorded in West Feliciana; that the property in Feliciana was sold for judgments of younger date than the sale aforesaid; the first note of $18,000 was paid by a renewal of note payable to the Union Bank, the other two were paid by drafts; the note given on renewal, was not endorsed by Col. Phillips;

Col. Phillips was no party to the drafts referred to; the drafts were on time and suited witness; witness thought from appearances, that Preston and Phillips were just introduced to each other, or not long acquainted, when they met at the notary's, as above related; some short time before the act was passed, witness met Col. Phillips at the theatre, and had some conversation about his endorsing for Carr; said he, Phillips, had promised to endorse for Carr, but Carr said it would only be temporarily, as he had made arrangements to change the endorsements, by substituting Col. Isaac T. Preston in the place; witness thinks that Col. Phillips must have heard the conversation related to above, as it took place at the notary's; does not recollect that Phillips made any reply to Col. Preston; Phillips must have heard it, as the conversation was made direct by Preston to him; and Phillips must have heard the direction of Preston to the notary, to insert the clause; thinks they met at the notary's at 10 or 11 in the morning; neither the plaintiff or defendant attended at any other time at the notary's, than that mentioned, nor were they present when he and Carr executed the act, nor can he say that Phillips has seen the act; there was no arrangement between him and Preston, in relation to the sale of the property. It is admitted, that the property was purchased by Col. Preston, plaintiff, for $67,500; that the third note was paid by draft prior to the sale under the seizure and sale; the three last notes assumed by Preston, are in the hands of witness; witness has never had the mortgage raised, to secure the last three notes.

Signed, R. R. BARROW.

Sworn to and subscribed before me, this 23d April, 1841.

DUNCAN N. HENNEN, *Clerk.*

And at the same time, to wit, on the trial of this cause, the following documentary proof was offered and received in evidence, but without being marked as filed.

Petition in Barrow vs. Carr.

Document D.

To the honorable district court of the fourth judicial district of the State of Louisiana, holding sessions in and for the parish of Pointe Coupee.

The petition of Robert Ruffin Barrow, living and residing in the parish of Lafourche Interior, respectfully shows that, by an act executed before Louis T. Caire, notary public in and for the parish of New Orleans, on the 17th of March, 1837, your petitioner sold to Samuel John Carr, then residing in the parish of Assumption, and now in the parish of Pointe Coupee, a plantation in the said parish of Pointe Coupee, having 36 arpents front on the Mississippi river by the ordinary depth of 40 arpents, bounded on the one side by the land of William Taylor, and on the other side by the land of Pierre Louis L'hermite, with all its appurtenances; and also a number of slaves, whose names and ages, as designated in the said act of sale, are—Neptune, aged 36 years; Reuben, 21 years; Jerry, 28 years; Big Davy, 29 years; Priestley Engineer, with

a sore leg, 22 years; Beverly, 26 years; Abraham, 36 years; Davy, 26 years; Cesar, 36 years; Ralph, 41 years; Charles, blind of an eye, 31 years; Lafleur, with a rupture, 36 years; Henry, 26 years; Baptiste, 29 years; Tom, 31 years; Petit Louis, 17 years; Louis Mandinger, 32 years; Thomas, 41 years; James Crow, 16 years; Ralph, 11 years; Charles, 13 years; Severe, 11 years; Ciprian, 6 years; Mary, 36; Laurette, 13 years; Fanny, 20 years; Anny, 31 years; Catherine, 42; Betsey, 26 years; Betsey's infant; Polly, 21 years; Diana, 46 years; Suzanna, 26 years; Nancy, 27 years; Lucille, 24 years; Dorothee, 41 years; Cecile, 13 years; Sarah Ann, 11 years; Isabella, with a sore leg, 41 years; Fanny Bayon, blind of both eyes, 23 years; her child, 3 years; Therese, 4 years; Abraham, 26 years; Bill Hall, 26 years; Andrews, 31 years; James, 35 years; Joe, 22 years; Betsey, 20 years; her two children, one at the breast, the [other] 4 years; Silvy, 4 years; Martha, 18 years; his rights, claims, and recourse in warranty, for two unsound slaves named Robert, aged about 30 years, and Edward Congo, about 35 years.

Also, a tract of land, without any improvements, situated in the parish of West Feliciana, designated as lot number 7, measuring 326 superficial arpents, bounded by lots Nos. 6 and 8, fronting on the Mississippi river, about two miles below the mouth of the Bayou Sara.

Your petitioner shows, that the said sale was made for the sum of one hundred and forty thousand six hundred and ninety-five dollars and 68, $140,695 68; of which, the said S. J. Carr paid the sum of $16,921 27 in cash, and for the balance of $124,774 41, the said Carr subscribed and delivered to your petitioner six promissory notes, all dated the 17th of March, 1837, to the order of, and endorsed by, Jno. S. Preston, and also endorsed by George W. Phillips, and payable at the Union Bank of Louisiana; the first of these notes being for the amount or sum of $18,028 26, and payable on the 1st of March, 1838; the second, being for the sum of $19,135 25, and payable on the 1st of March, 1839; the third, being for the sum of $20,242 24, and payable on the 1st of March, 1840; the fourth, being for the sum of $21,349 23, and payable on the 1st of March, 1841; the fifth, being for the sum of $22,456 22, and payable on the 1st of March, 1842; and the sixth, being for the sum of $23,563 21, and payable on the 1st of March, 1843; and to secure the payment of the said notes, the said S. J. Carr specially mortgaged the said two tracts of land and slaves, promising not to alienate them to the prejudice of the said mortgage.

Your petitioner further shows, that it appears from the said act of sales that at the time of its execution, the said plantation and most of the slaves were covered by a mortgage granted by your petitioner to Sosthene Allain, his vendor, by an act passed before A. Robin, parish judge and ex-officio notary public, in and for the parish of Point Coupee, on the 15th of March, 1836, to secure the payment of six promissory notes drawn by your petitioner, and being precisely of the same amount, and falling due on the same days as the said six notes executed and delivered to your petitioner by the said S. J. Carr as aforesaid; that it was stipu-

lated between your petitioner and the said S. J. Carr, in the aforesaid act, that the said six notes of the said Carr should be offered by your petitioner to the said Allain, in exchange for your petitioner's said six notes; and that if the said Allain consented thereto, the said mortgage in his favor should be raised, but if he did not agree thereto, the proceeds of each of the notes of the said Carr should be applied by your petitioner to the payment of the corresponding not[e] drawn by your petitioner, and held by the said Allain. Your petitioner shows that the said Allain did not consent to the said exchange, and that the said S. J. Carr did not pay either of his two aforesaid notes, which fell due before the institution of the present suit, to wit, his note of $18,028 26, due on the 1-4 of April, 1838, and his note of $19,135 25, due on the first of March, 18 , although the payment thereof was demanded at the place of payment therein designated, and although the said Carr has been amicably requested to pay the same.

Your petitioner shows, that he has made the necessary payments and arrangements for raising the mortgage and privile*dg*e, by which the notes given by your petitioner to the said Sosthene Allain, which fell due in 1837, 1838, and 1839 [were] secured, and that they have been accordingly raised; and that he has also procured the mortgage to be raised, by which the said notes given by the said S. J. Carr, which fell due in 1838, was secured, reserving his personal recourse on the said note against the said Carr and his endorsers. Your petitioner shows, that from the premises it appears that there are still outstanding, and bearing on the said property, the said four notes given by your petitioner to the said Allain, falling due in 1840, 1842, and 1843, amounting together to $87,-610 90; and the said five notes, giv*ing* by the said Carr to your petitioner, one of which, of the sum of $19,135 25, fell due on the 1-4 of March, 1839, when it was protested for non-payment; and the other four, amounting together to the sum of $87,610 70, will fall due on the same days, and are respectively of the same amount, as the four notes of your petitioner, which are not yet due, and still bear mortgage on the said property; and that there is consequently due on this mortgage, granted by your petitioner to the said Allain, the sum of $87,610 90, and on the mortgage granted by the said Carr to your petitioner, the sum of $106,-746 15.

Your petitioner shows that the premises will more fully appear from the aforesaid act of sale of your petitioner to the said Carr, and from the said five last mentioned notes of the said Carr; and also from the certificate of mortgages which are annexed to this petition. Your petitioner shows, that if the said S. J. Carr had paid any of his said aforesaid notes, he would have been entitled to the possession of the corresponding note given by your petitioner to the said Allain, in order to raise the mortgage by which the same is secured. Wherefore, your petitioner prays that a writ of seizure and sale may be issued, directing the sheriff of the parish of Point Coupee to seize and sell in block the aforesaid plantation and tract of land situated in the parish of Point Coupee, with all its appurtenances, and also the above named slaves, on the following terms, to wit: that the

purchaser shall assume the aforesaid four notes drawn by your petitioner to the order of Wm. R. Barrow, and still bearing mortgage on the property, one of them for the sum of $20,242 24, falling due on the first of March, 1840; the second being for the sum of $21,349 23, and falling due on the 1st of March, 1841; the third being for the sum of $22,456 22, and falling due on the 1st of March, 1842; and the fourth being for the sum of $23,563 21, and falling due on the 1st March, 1843, and the balance cash; to pay your petitioners the amount of the said note protested on the fourth of March, 1839, for nineteen thousand one hundred and thirty-five dollars and 25 cents, ($19,135 25,) with five per cent. interest from the 4th March, 1839, until paid, and six dollars costs of protest and costs of this suit, with all such other and further aid and relief as the nature of this case may admit and require; and your petitioner further declares, that the said S. J. Carr will be entitled, after said property shall have been sold by the sheriff as aforesaid, to be credited on the said notes annexed to this petition for the price of the said sale.

(Signed) LOUIS JANIN,
Attorney for petitioner.

(Petition endorsed.) 1,072, R. R. Barrow vs. S. J. Carr, petition.

Let an order of seizure and sale issue, as prayed for, and let the property described in the prayer of plaintiff's petition be sold according to law, and on the terms and conditions stated therein, to satisfy the demand of the petitioner and costs of proceedings. April 5th, 1839.

(Signed) THOS. C. NICHOLLS,
Judge Jud. district.

Filed April 8th, 1839.

(Signed) VALERY LEDOUX, *Dep. Clerk.*

State of Louisiana, parish of Pointe Coupee:

I, the undersigned, judge of the parish of Point Coupee, and ex-officio recorder of mortgages therein, do hereby certify, that there exists no mortgage recorded in my office against Robert Ruffin Barrow on the following property:

1st. A tract of land or plantation situated in this parish, with its appurtenances, of 36 arpents front, to the river, by 40 arpents in depth, bounded on one side by land of William Taylor, and on the other by land of P. L. L'Hermiti, with the cattle, horses, &c., on said plantation.

2d. 43 head of slaves, to wit: Neptune, of 35 y'rs; Reuben, of 20; Jerry, of 27; Big Davy, of 28; Priestley, of 21; Beverley, of 25; Abraham, of 35; Cesar, of 35; Ralph, of 40; Charles, of 30; Lafleur, of 35; Henry, of 25; Baptiste, of 28; Tom, of 30; Robert, of 30; Petit Louis, of 16; Louis Mandiga, of 30; Edouard Congo, of 35; Thomas, of 40; James Crow, of 15; Rafa, of 10; Charles, of 12; Severe, of 10; Cyprien, of 5; Mary, of 35; Laurette, of 12; Fanny, of 20; Anny, of 30; Catherine, of 42; Betsy, of 25; Patty, of 30; Diana, of 45; Sarah, of 25; Nancy, of 26; Lucile, of 25; Dorothee, of 40; Cecile, of 12; Sarah Ann, of 10; Isabella, of 40; Fanny Bayon, of 22,

and her child, of 2 years, and Therese, of 45 years; except the following, to wit: a mortgage in favor of Sosthene Allain, on the said plantation and slaves, to secure the payment of four notes subscribed by said Robert R. Barrow, and endorsed by Wm. R. Barrow, being in part for the purchase price of said plantation and slaves, for the sums respectively of $20,242 42, $21,349 15, $22,456 95, $23,563 21, the first to become due and payable in the month of March, 1840; the second in the month of March, 1841; the third in the month of March, 1842, and the last in the month of March, 1843, which notes were paraphed at the time of the sale of said plantation and slaves, by the said Sosthene Allaine, to the said Robert R Barrow, by the judge of this parish, on the 15th March, 1836, to identify them with the act of sale passed before him on that day.

In faith whereof, I have hereto affixed my signature and seal of office, this 2d April, 1839.

(Signed) THOS. J. COOLEY, [SEAL.]
Parish Judge.

No. 1,072. Filed April 8th, 1839.
(Signed) VALERY LEDOUX, *Dep. Clerk.*

Document C.

United States of America,
State of Louisiana, city of New Orleans:

Be it remembered, that this day, the seventeenth of the month of March, one thousand eight hundred and thirty-seven, and in the sixty-first year of the independence of the United States of America, before me, Louis T. Caire, notary public, in and for the city and parish of New Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and subscribed, personally appeared Mr. Robert Ruffin Barrow, residing in the parish of Terrebonne, State aforesaid, who declared and said that he does hereby convey, transfer, abandon, set over, and quit claim, without any exception or reserve, and with substitution and subrogation to his place and stead, unto Mr. Samuel John Carr, residing in the parish of Assumption, State aforesaid, being *day* in this city present, and accepting for himself, his heirs and assigns, all and singular the titles, interests, and claims which he, the said Barrow, had, or might have, on the fifteenth day of March, eighteen hundred and thirty-six, or at any time since, and by virtue of the act of sale hereinafter mentioned, in and to—1st. A certain tract of land or plantation, situated in the parish of Point Coupee, State aforesaid, having thirty-six arpents front, on the river Mississippi, by the ordinary depth of forty arpents, bounded on one side by land of William Taylor, and, on the other, by land of Pierre L. L'Hermite, such as the whole now stands, with all and singular the buildings and improvements thereon—sugar house, negro huts, fences, and without any reserve; together with the work horses, yokes of oxen, sheep, and all the horned cattle branded S. A., or any other belonging to the plantation; ploughs, carts, wheels, tools of every description, and all and singular the implements of hus-

bandry in use for the cultivation of said plantation; the purchaser declaring that he has a perfect knowledge of the premises, is satisfied thereof, and does not wish a more detailed statement or description thereof. 2nd. Fifty-two slaves, now on the premises, and belonging thereto, whose names and age are as follows, viz: 1. Neptune, 36 years; 2. Reuben, 21 years; 3. Jerry, 28 years; 4. Big Davy, 29 years; 5. Priestley Engineer, with a sore leg, 22 years; 6. Beverley, 26 years; 7. Abraham, 36 years; 8. Davy, 26 years; 9. Cesar, 36 years; 10. Ralph, 41 years; 11. Charles, blind of an eye, 31 years; 12. Lafleur, with a rupture, 36 years; 13. Henry, 26 years; 14. Baptiste, 29 years; 15. Tom, 31 years; [16.] Peter Louis, 17 y'rs; 17. Louis Madinger, 32 y'rs; 18. Thomas, 41 years; 19. James Crow, 16 years; 20. Ralph, 11 years; 21. Charles, 13 years; 22. Severe, 11 years; 23. Ciprien, 6 y'rs; 24. Mary, 36 years; 25. Laurette, 13 y'rs; 25. Fanny, 20; 26. Anny, 31 years; 27. Catherine, 42 years; 28. Betsy, 26 years; 29. Betsey's infant; 30. Polly, 21 years; 31. Diana, 46 y'rs; 32. Suzanna, 26 y'rs; 33. Nancy, 27 y'rs; 34. Lucille, 24 y'rs; 35. Dorothee, 41 y'rs; 36. Cecile, 13; 37. Sarah Ann, 11 y'rs; 38. Isabella, with a sore leg, 41 y'rs; 39. Fanny Bayon, blind of both eyes, 23 y'rs; 40. Her child, 3 y'rs; 41. Therese, 4 y'rs; 42. Abraham, 26 y'rs; 43. Billy Hall, 26 y'rs; 44. Andrew, 31 y'rs; 45. James, 35 y'rs; 46. Joe, 22 y'rs; 47. Betsey, 20 y'rs; 48. And her two children [one] at the breast; 49. The other, 4 y'rs; 50. Sylvy, 4 y'rs; 51. Martha, 18 y'rs.

3d. His rights, claims, and recourse in warranty for two unsound slaves, named Robert, aged about thirty years, and Edward Congo, thirty-five years, both sold under full guarantee, but who were unsound slaves, and died in consequence thereof. Said rights, claims, and recourse in warwanty, are hereby transferred, without any guarantee on the part of Mr. Barrow, and accepted, such as they are, by the said purchaser.

4th. A tract of land, without any improvements, situated in the parish of West Feliciana, and designated as lot number seven, measuring three hundred and twenty-six superficial arpents, bounded by lots numbered eight and six, fronting on the Mississippi, about two miles below the mouth of Bayou Sarah.

The plantation herein above described, the forty-two slaves first named, viz: from number one to number forty-two inclusively, the two unsound slaves, the tract of land last described, and finally, the buildings, cattle, utensils, in a word, all the articles of husbandry and animals on the plantation, and thereto belonging, have been purchased by the said Robert Ruffin Barrow from Mr. Sosthene Allain, per act passed before Alphonse Robin, judge and ex officio notary public, in and for the parish of Point Coupee, State aforesaid, on the fifteenth day of March, in the year eighteen hundred and thirty-six, copy whereof, duly certified, has been exhibited to me, the undersigned notary; and the nine slaves last mentioned, to wit, from number forty-three to fifty-one inclusively, belong to him, the said Barrow, by purchase made from sundry persons, whose seals he binds himself to exhibit, whenever required so to do, of which statement, the purchaser acknowledges himself satisfied. But it is well

understood and agreed upon by the contracting parties, that the nine last mentioned slaves are hereby sold with guarantee of the title of property only, and without any guarantee against the vices and maladies prescribed by law, but with substitution and subrogation to his place and stead, for any recourse in warranty he might exercise against his vendor, and the vendors of his vendor.

To have and to hold the tracts of land, slaves, and premises, hereinabove described, unto the said purchaser, his heirs and assigns, to their proper use and behoof forever.

This sale is made and accepted for the sum of one hundred [and] forty-one thousand six hundred [and] ninety-five dollars and sixty-eight cents, in part payment whereof the said purchaser, well and effectually paid in current money of the United States, delivered out of the sight of the undersigned notary and witnesses, the sum of sixteen thousand nine hundred and twenty-one dollars [and] twenty-seven cents, to the said R. R. Barrow, the receipt whereof he does hereby acknowledge, and grant a full and complete discharge and acquittance therefrom.

	$16,921 27
And in payment of the balance, the said purchaser handed over to me, the undersigned notary, six promissory notes, bearing even date herewith, subscribed by him, to the order of John S. Preston, endorsed by him, the said John S. Preston, domiciliated in the parish of Ascension, as second endorser, it being understood, that although each of the endorsers is responsible for the whole of the amount of said notes, they are between themselves equally responsible. Said notes have been made payable at the domicil of the Union Bank of Louisiana, and their amount and terms of payment are as follows, viz :	
A note of the sum *of the sum* of eighteen thousand twenty-eight dollars twenty six cents, payable on the first day of March, eighteen hundred and thirty-eight	18,028 26
A note of the sum of nineteen thousand one hundred thirty-five dollars twenty-five cents, payable on the first day of March, eighteen hundred and thirty-nine	19,135 25
A note of twenty thousand two hundred forty-two dollars twenty-four cents, payable on the first day of March, eighteen hundred and forty - - -	20,242 24
A note for the sum of twenty-one thousand three hundred forty-nine dollars twenty-three cents, payable on the first day of March, eighteen hundred and forty-one - - - - - - -	21,349 23
A note of the sum of twenty-two thousand four hundred fifty-six dollars twenty-two cents, payable on the first day of March, eighteen hundred and forty-two -	22,456 22

STATEMENT—Continued.

And finally a note of the sum of twenty-three thousand five hundred sixty-three dollars twenty-one cents, payable on the first day of March, eighteen hundred and forty-three	23,563 21
Making, together, an aggregate sum of one hundred forty-one thousand six hundred ninety-five dollars and sixty-eight cents	$141,695 68

The notes hereabove described, have been signed, ne varietur, by the undersigned notary, to identify them with these presents, and delivered to the vendor, the receipt whereof he does hereby acknowledge.

And to secure the payment of said notes, the plantation above described, and all its dependancies and appurtenances, to the slaves and the tract of land in the parish of West Feliciana, are, and remain hereby, mortgaged and hypothecated in favor of the vendor and of the bearer of said notes until final payment, hereby consenting, said purchaser, that the present mortgage be recorded whenever it shall or may be necessary, and binding himself not to sell, alienate, or deteriorate the same to the prejudice of this mortgage.

The contracting parties have moreover declared the notes, hereabove described, have *not*, at the request of Mr. Barrow, and by mutual consent, been drawn for the same amount, and made payable at the same periods, as those subscribed by him to the order of W. B. Barrow, endorsed by him, secured by a mortgage on the premises, and given in payment to Mr. Sosthene Allain, his vendor, because he, the said R. R. Barrow, is desirous of substituting the notes received by him this day, in the place and stead of the said notes, in case that said Allain, or the holder or holders of said notes consent thereto.

And whereas, on account of the absence of S. Allain, it is impossible to ascertain presently his determination in this respect, and his consent to the substitution of said notes, it has been specially agreed upon, as an express condition of the present sale:

1st, That said notes shall be deposited in the Union Bank of Louisiana, in this city, by the vendor Mr. Barrow.

2nd. That they shall remain there as a special deposit, until the intention of Mr. Allain, or his legal representatives or assigns, it being clearly understood and made known to the contracting parties.

3d. That in case the said Allain and his heirs, or the bearer or bearers of said notes, should agree to the exchange and substitution of said notes, then the mortgage granted in favor of the said Allain shall be raised, because the payment of the purchaser's notes above described is secured, not only on the premises primitively sold, but also on the nine slaves sold by these presents.

4th. And finally, that should the said Allain, or the bearer or bearers of said notes, decline or refuse, for any reason or cause soever, to make the exchange hereabove alluded to, then, and in such a case, the amount of the notes deposited in the Union Bank as aforesaid, as soon as the same shall have been paid by the actual purchaser, his heirs or assigns, shall be applied to the payment of Mr. Barrow's notes, when the same shall successively arrive at maturity.

The said R. R. Barrow does also, by these presents, for and in consideration of the sum of three thousand dollars, to him paid cash in hand by the said Carr, the receipt whereof he does hereby acknowledge, and grant a full acquittance therefrom, sell, bargain, and abandon, unto the said Samuel John Carr, present and accepting, all the cotton now on the plantation, supposed to be upwards of one hundred bales, but said cotton is sold, such as it stands, be the same more or less, the purchaser acknowledging that he has seen the cotton, to him presently sold, and is satisfied thereof. It appears from the certificate of the judge, ex-officio recorder of mortgages in and for the parish of Pointe Coupee, dated on the sixteenth instant, and hereto annexed, that the plantation, the tract of land in the parish of West Feliciana, and the forty-two slaves first mentioned, are subject to the mortgage granted by the said R. R. Barrow, by the act passed before the honorable judge of the parish of Pointe Coupee, on the 15th day of March, eighteen hundred and thirty-six, to secure the payment of seven notes, amounting together to the sum of one hundred forty-one thousand six hundred and ninety-five dollars sixty-eight cents. The vendor having exhibited the first note of sixteen thousand nine hundred twenty-one dollars twenty-seven cents, which he paid when due, on the first instant, binds himself to have the said mortgage reduced for the amount of this note, and to protect and guarantee the purchaser from the effect of the balance of said mortgage.

It appears also from the said certificate, that the nine last mentioned slaves, from number forty-three to fifty-one, are free from mortgage in the name of the vendor. Mr. R. R. Barrow does hereby declare that he is neither tutor nor curator of minors, interdicted persons, or absentees, and that he has never contracted any marriage.

Thus done and passed in the office at the city of New Orleans, the day, month, and year aforementioned, in the presence of Charles Darcantel and Phillipe Lacoste, witnesses thereto required, and residing in this city, who have signed with the said appearers and me, the notary, after reading of the act.

(Signed,) ROBERT R. BARROW,
S. JNO. CARR,
CHARLES DARCANTEL,
PHI. LACOSTE,
LOUIS T. CAIRE, *Not. pub.*

I certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usage of the State. In faith whereof, I grant these presents under my signature, and the impress of

my seal of office at New Orleans, this thirteenth day of March, one thousand eight hundred and thirty-seven.

(Signed) LOUIS T. CAIRE, [SEAL.]
Not. pub.

STATE OF LOUISIANA, *parish of Point Coupee:*

I, the undersigned parish judge, in and for the abovementioned parish, and ex-officio recorder of mortgages therein, hereby certify that the mortgage contained in the foregoing act, was duly recorded in my book of legal conventional mortgages on the fifth day of April, 1837.

In faith whereof, I have hereto affixed my signature and seal of office, this 2d April, 1839.

(Signed) THOS. J. COOLEY, *Parish judge.*

Endorsed.—1,072, (17th March, 1837;) sale of plantation and slaves; Robert R. Barrow to Samuel Jno. Carr; filed April 8th, 1839.

(Signed) VALERY LEDOUX, *Dept. clerk.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of March, in the year one thousand eight hundred and thirty-nine, at the request of the Union Bank of Louisiana, holder of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the Union Bank of Louisiana in this city, where the same is made payable, and demanded payment of its contents, and was answered by the book-keeper that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of John Cragg and Leonce Hebrard, witnesses.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) A. MAZAREAU, *Not. pub.*

NEW ORLEANS, *March* 17, 1837.

$ dollars $19,135 25.

On the first day of March, eighteen hundred and thirty-nine, I promise to pay to the order of John S. Preston, esq., at the domicil of the Union Bank of Louisiana in this city, the sum of nineteen thousand one hundred thirty-five dollars twenty-five cents, value received.

Signed, S. JNO. CARR.

Endorsed.—Jno. S. Preston, Geo. W. Phillips, R. R. Barrow.

Ne varietur, in conformity with an act bearing a mortgage passed this day before me.

LOUIS T. CAIRE, *Not. pub.*

NEW ORLEANS, *March* 17, 1837.

Dollars $19,135 25. NEW ORLEANS, *March 17th*, 1837.

On the first day of March, eighteen hundred and thirty-nine, I promise to pay to the order of John S. Preston, esquire, at the domicile of the Union Bank of Louisiana, in this city, the sum of nineteen thousand one hundred thirty-five dollars twenty-five cents, value received.

Signed, S. JNO. CARR, *pl'ff.*

Ne varietur, in conformity with an act bearing mortgage, passed this day before me. LOUIS T. CAIRE,
Notary Public.

New Orleans, March 17, 1837.

(Endorsed.) Jno. S. Preston, Geo. W. Phillips, R. R. Barrow, 1072, S. Jno. Carr to R. R. Barrow.

(Protest endorsed.)

(Signed,) VALEREY LEDOUX, *Dep. Clerk.*

STATE OF LOUISIANA, *parish of Point Coupee:*

I, the undersigned, judge of the parish of Point Coupee, and ex-officio recorder of mortgages therein, do hereby certify, that on the fifth day of April, eighteen hundred and thirty-seven, a special mortgage with vendor's privilege, was recorded in my book of legal conventional mortgages, against Samuel John Carr, on the following property:

A tract of land or plantation in this parish, of 36 arpents, front to the Mississippi, by 40 arpents in depth, bounded by William Taylor and R. L. L'hermiti, with the improvements thereon, cattle, horses, tools, &c., and every moveable on the place.

2nd. Fifty-two slaves. Neptune, of 36 years; Reuben, of 21 years; Jerry, 28 years; Big Davy, 29 years; Priestley, 22 years; Beverly, 26 years; Abraham, 36 years; Davy, 26 years; Cesar, 36 years; Ralph, 41 years; Charles, blind, 31 years; Lafleur, 36 years; Henry, 26 years; Baptiste, 29 years; Tom, 31 years; Petit Louis, 17 years; Louis Mandiga, 32 years; Thomas, 41 years; James Crow, 16 years; Ralph, 11 years; Charles, 13 years; Severe, 11 years; Ciprien, 6 years; Mary, 36 years; Laurette, 24 years; Anny, 31 years; Catherine, 42 years; Betsy, 26 years, her child Polly, 21 years; Diana, 46 years; Suzanna, 26 years; Lucille, 24 years; Dorothe, 41 years; Cecile, 13 years; Sarah Ann, 11 years; Isabella, 41 years; Fanny Bayon, 23, her child 3 years; Therese, 4 years; Abraham, 26 years; Billy Hall, 26 years; Andrews, 31 years; James, 35 years; Joe, 22 years; Betsey, 20, and her two children, one at the breast, and the other of 4 years; Silvy, 4 years; Martha, 18 years.

3rd. A tract of land in the parish of West Feliciana, without improvements, designated as lot number 7, of 326 superficial arpents, bounded by lots Nos. 8 and 6, fronting the Mississippi; at two miles below Bayou Sarah, for the price of all said property, in favor of Robert R.

Barrow, after payment at the time of sale, of the sum of $16,921 37, to wit, the sum of $18,028 16, payable at the Union Bank of Louisiana, 1st March, 1838; $19,135 25, 1st March, 1839; $20,242 24, payable 1st March, 1840; $21,349 23, payable 1st March, 1841; $22,456 22, payable 1st March, 1842; $23,163 21, 1st March, 1843. And I do further certify, that the said mortgage still remains extant on my book of mortgages, with the exception of a release given by Louis Janin the holder at the time of the note given for the first instalment above mentioned, and which was granted by said Janin, by an act before Louis T. Caire, notary public, New Orleans, of date the 30th of March, 1839, and which act has been duly recorded in my office, on the 2nd April, 1839; and which partial release was entered on the said book of mortgages, on the 2nd day of April, 1839.

In faith whereof, I have granted this certificate, to which I have affixed my hand and official seal, this 6th day of April, 1839.

(Signed,) THOS. J. COOLEY,
Parish Judge.

(Endorsed.) 1072. R. R. Barrow vs. S. J. Carr.

Filed, April 8th, 1839.

VALARY LEDOUX, *Dep. Clerk.*

STATE OF LOUISIANA, *parish of Point Coupee:*

I, the undersigned, judge of the parish of Pointe Coupee, and ex-officio recorder of mortgages, in and for the said parish, do hereby certify, that on the 15th March, 1836, a mortgage was recorded against Robert Ruffin Barrow, on my book of legal conventional mortgages, in favor of Sosthene Allain, in the following described property:

1st. A tract of land or plantation, and its appurtenances, in this parish, of thirty-six arpents front, by forty arpents in depth, bounded by land of William Taylor, and by land of P. L. L'hermite, the cattle, horses, &c., on the said plantation, without exception.

2nd. 43 head of slaves, of both sexes and different ages, viz: Neptune, of 35 years; Reuben, of 20 years; Jerry, of 27 years; Big Davy, of 28 years; Priestley, of 21 years; Beverly, of 25 years; Abraham, of 35 years; Davy, of 25 years; Cesar, of 35 years; Ralph, of 40 years; Charles, of 30 years; Lafleur, of 35 years; Henry, of 25 years, Baptiste, 28 years; Tom, of 30 years: Robert, of 30 years; Petit Louis, of 16 years; Louis Mandiga, of 30 years; Edward Congo, of 38 years; Thomas, of 40 years; James Crow, of 15 years; Rafa, of 10 years: Charles, of 12 years; Severe, of 10 years; Cyprien, of 5 years; Mary, of 35 years; Laurette, of 12 years; Fanny, of 20 years; Anny, of 30 years; Catherine, of 42 years; Betsey, of 25 years; Polly, of 30 years; Diana, of 45 years; Susan, 25 years; Nanny, of 26 years; Lucile, of 23 years; Dorothee, of 40 years; Cecile, of 12 years; Sarah Ann, of 10 years; Isabella, of 40; Fanny Bayon, of 22 years, and her child of 2 years; Therese, of 45 years.

3rd. A tract of land without any improvements, in the said parish of West Feliciana, and designated as lot No. 7, measuring 326 arpents superfi-

cial; bounded by lots Nos. 8 and 6, fronting the Mississippi, about two miles below Bayou Sara; which tract of land belonged to the vendor, Sosthene Allain, for having purchased the same of Mrs. Widow Paulin Allain; for the security of the payment of the purchase price of said property, payable as follows: to the said Sosthene Allain, seven promissory notes subscribed by the said Robert Ruffin Barrow, to the widow of William R. Barrow, and endorsed by the latter, payable each and every month of March, 1837, 1838, 1839, 1840, 1841, 1842 and 1843; the first for the sum of $16,921 27; the second of $18,028 66; the third of $19,135 25; the fourth of $20,242 24; the fifth of 21,349 95; the sixth of $22,456 22; the seventh of $23,563 21; which were signed ne varietur, by the judge of the parish.

And I do further certify, that the said mortgage still remains extant on my said book of legal and conventional mortgages, with the exception of so much as secures the payment of the first, second, and third notes above described; and for which the said mortgage, for so much, has been cancelled and annulled on my said book of mortgages; on the first, by the production of the note, as paid; on the second and third, in consequence of a release granted therefor by Louis Janin, holder of said second and third notes, by act passed on the 30th March last, before L. T. Caire, notary public, New Orleans, and recorded in my office on the 2nd instant.

In testimony whereof, I hereto affix my signature and official seal, this 6th of April, 1839.

(Signed) THOS. J. COOLEY
Parish Judge.

(Endorsed,) 1,072, R. R. Barrow vs. S. J. Carr.
Filed, April 8th, 1839.
(Signed) VALERY LEDOUX, *Dep. Clerk.*

Dollars, $20,242 24. NEW ORLEANS, *March* 17, 1837.

On the first day of March, 1840, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union Bank of Louisiana, in this city, the sum of twenty thousand two hundred forty-two dollars twenty-four cents, value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, Geo. W. Phillips. 1,072, filed, April 8, 1839.
VALERY LEDOUX, *D'y Cl'k.*

Ne varietur, in conformity with an act bearing mortgage, passed this day, before me. New Orleans, 17, 1837.
LOUIS T. CAIRE, *Not. Pub.*

Dollars, 21,349 23. NEW ORLEANS, *March* 17, 1837.

On the first day of March, eighteen hundred and forty-one, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union

Bank of Louisiana, in this city, the sum of twenty-one thousand three hundred forty-nine dollars twenty-three cents, value received.

Signed, S. JNO. CARR.

(Endorsed,) John S. Preston, Geo. W. Phillips. 1,072, filed April 8, 1839.

Signed, VALERY LEDOUX, *Dep. Clerk.*

Ne varietur, in conformity with an act bearing mortgage, passed this day, before me. New Orleans, 17, 1837.

LOUIS T. CAIRE, *Not. Pub.*

Dollars, $22,456 22. NEW ORLEANS, 17 *March*, 1837.

On the first day of March, eighteen hundred and forty-two, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union Bank of Louisiana, in this city, the sum of twenty-two thousand four hundred fifty-six dollars twenty-two cents, value received.

Signed, S. JNO. CARR.

(Endorsed,) John S. Preston, Geo. W. Phillips. 1,072, filed April 8, 1839.

(Signed) VALERY LEDOUX, *Dep. Clerk.*

Ne varietur, in conformity with an act bearing date, mortgage, passed this day, before me. New Orleans, 17, 1837.

LOUIS T. CAIRE, *Not. Pub.*

Dollars, 23,563 21. NEW ORLEANS, *March* 17, 1837.

On the first day of March, eighteen hundred and forty-three, I promise to pay to the order of John S. Preston, esq., at the domicile of the Union Bank of Louisiana, in this city, the sum of twenty-three thousand five hundred sixty-three dollars twenty-one cents, value received.

Signed, S. JNO. CARR.

(Endorsed,) Jno. S. Preston, Geo. W. Phillips. 1,072, filed April 8th, 1839.

Signed, VALERY LEDOUX, *Dep. Clerk.*

True copies:

VALERY LEDOUX.

Ne varietur, in conformity with an act bearing mortgage, passed this day, before me. New Orleans, 17, 1837.

LOUIS T. CAIRE, *Not. Pub.*

Act of sale of Allain to Barrow, referred to in foregoing petition.

Document E.

STATE OF LOUISIANA, *parish of Point Coupee:*

Be it remembered, that, on this day, the fifteenth of March, A. D. one thousand eight hundred and thirty-six, before me, Alphonse Robin, parish judge in and for the parish of Point Coupee, in the presence of the

undersigned witnesses, personally appeared Sosthene Allain, a planter of this parish, who did declare and say, that he has this day bargained and sold, transferred and set over, as he doth hereby bargain, sell, transfer, and set over, from henceforth and forever, unto Robert Ruffin Barrow, a planter of the parish of Terrebonne, here present, and accepting purchaser, for himself, his heirs and assigns, the hereinafter described property, viz:

1st. A tract of land or plantation, situate in this parish, measuring thirty-six arpents front to the Mississippi, by the ordinary depth of forty arpents, bounded on one side by land of William Taylor, and on the order by land of Pierre L. L'hermite, with all and singular the buildings and improvements thereon—sugar house, negro houses, fences, &c., such as the whole now stands, without any reserve; together with the work horses, yokes of oxen, sheep, and all the horned cattle branded S. A. on the place; ploughs, carts, wheels, tools of every description, and all and singular the implements of husbandry in use for the cultivation of the place, the purchaser dispensing with a more minute description thereof, having taken a sufficient cognizance of the whole.

2nd. Forty-three (43) head of [slaves,] of both sexes and different ages, whose names and ages are as follows, viz: 1. Neptune, of 35 years of age; 2. Reuben, of 20 years; 3. Jerry, of 27 years; 4. Big Davy, of 28 years; 5. Priestley, of 21 years, an engineer, having a sore leg; 6. Beverley, of 25 years; 7. Abraham, of 35 years; 8. Davy, of 25 years; 9. Cæsar, of 35 years; 10. Ralph, of 40 years; 11. Charles, of 30 years, blind of one eye; 12. Lafleur, of 35 years, with a rupture; 13. Henry, of 25 years; 14. Baptiste, of 28 years; 15. Tom, of 30 years; 16. Robert, of 30 years; 17. Petit Louis, of 16 years; 18. Louis Mandingo, of 30 years; 19. Edward Congo, of 35 years; 20. Thomas, of 40 years; 21. James Crow, of 15 years; 22. Rafe, of 10 years; 23. Charles, of 12 years; 24. Severe, of 10 years; 25. Cyprean, of 5 years; 26. Mary, of 35 years; 27. Laurette, 12 years; 28. Fanny, 20 years; 29. Anny, 30 years; 30. Catherine, 42 years; 31. Betsey, of 25 years; 32. Patty, of 30 y'rs; 33. Diana, of 45 years; 34. Suzan, of 25 years; 35. Nancy, of 26 years; 36. Lucile, of 23 years; 37. Doretha, of 4 years; 38. Cecile, of 12 years; 39. Sarah Ann, of 10 years; 40. Isabella, of 40 years; 41. Fanny Bayon, of 22 years, blind of both eyes; and 42. Her child, of 2 years; and 43. Theresa, of 45 years.

And 3d. A tract of land, without any improvement, situated in the parish of West Feliciana, designated as lot No. 7, measuring three hundred and twenty-six arpents, superficial, bounded by lots No. 8 and No. 6, fronting on the Mississippi, about two miles below the mouth of the Bayou Sara; which tract of land, as well as the plantation herein above described, belongs to the vendor, for having purchased the same from Mrs. Etinge Allain, widow of Pauline Allain, as it appears from the public deed, before the late J. H. Leedsling, then judge of this parish, dated August 26, 1816.

The present sale is made for and in consideration of the sum of one hundred and ten thousand seven hundred ($110,700) dollars, to wit,

for the plantation, and all its appurtenances, horses, cattle, &c., and the tract of land last described, and thirty-one thousand and two hundred ($31,200) dollars for forty-three slaves, viz.: for Neptune, one thousand dollars; Reuben, twelve hundred dollars; Jerry, one thousand dollars; Big Davy, twelve hundred dollars; Priestley, one thousand dollars; Beverly, twelve hundred dollars; Abraham, eleven hundred dollars; Davy, twelve hundred dollars; Ceasar, one thousand dollars; Ralph, one thousand dollars; Charles, eleven hundred dollars; Lafleur, nine hundred dollars; Henry, eleven hundred dollars; Baptiste, eleven hundred dollars; Tom, twelve hundred dollars; Robert, seven hundred dollars; Petit Louis, eleven hundred dollars; Louis Mandingo, eight hundred dollars; Edward Congo, five hundred dollars; Thomas, nine hundred dollars; James Crow, eight hundred dollars; Rafe, four hundred dollars; Charles, five hundred dollars; Severe, four hundred dollars; Cyprien, two hundred dollars; Mary, eight hundred dollars; Laurette, four hundred dollars; Fanny, seven hundred dollars; Anny, seven hundred dollars; Catherine, six hundred and fifty dollars; Betsey, eight hundred dollars; Patty, eight hundred dollars; Diana, three hundred dollars; Susan, eight hundred dollars; Nancy, eight hundred dollars, Lucele, four hundred dollars; Dorethe, two hundred and fifty dollars; Cecile, two hundred and fifty dollars; Sarah Ann, four hundred dollars; Isabella, one hundred dollars; Fanny and child, two hundred dollars, and Therese, two hundred and fifty dollars, which sum of one hundred and ten thousand and seven hundred ($110,700) dollars, the purchaser binds and obligates himself to pay, in seven yearly instalments, which, agreeably to previous agreement and special understanding between the parties, have been increased of the interest, calculated at seven per centum per annum. In consequence whereof, he has made and subscribed seven promissory notes, to the order of Wm. R. Barrow, and by him endorsed, payable at the counting-house of Lambeth & Thompson, of New Orleans; the first, for the sum of sixteen thousand nine hundred and twenty-one dollars twenty-seven cents, ($16,921 27,) payable on the first day of March, 1837. The second, of the sum of eighteen thousand and twenty-eight dollars twenty-six cents, ($18,028 26,) payable the first of March, 1838. The third, of nineteen thousand one hundred and thirty-five dollars twenty five cents, payable the first of March, 1839. The fourth, of twenty thousand two hundred and forty-two dollars twenty cents, ($20,242 20,) payable on the first of March, 1840. The fifth, of the sum of twenty-one thousand three hundred and forty-nine dollars twenty-three cents, ($21,349 23,) payable on the first of March, 1841. The sixth, for the sum of twenty-two thousand four hundred and fifty-six dollars twenty-two [cents,] ($22,456 22,) payable on the first day of March, 1842, and the seventh, of the sum of twenty three thousand five hundred and sixty-three dollars twenty-one [cents,] [$23,563 21,] payable on the first of March, 1843; which notes were by me signed, ne varietur, and delivered to the vendor, who acknowledges the receipt thereof.

And in order better to secure the payment of said notes, on their be-

coming respectively due, the property herein above sold, shall stand and remain, specially and by privilege, mortgaged and hypothecated, till full and final payment. At this moment, the vendor declared that two of the above enumerated slaves, to wit, Dorother, had a pain in her head, and Diana was subject to indigestion, to which declaration the purchaser did not object. To have and to hold the herein above described plantation and appurtenances, said tract of land, and forty-three head of slaves, above named, unto the said R. R. Barrow, his heirs and assigns, for ever, and the said Sosthain Allain, for himself and his heirs, the said property shall and will warrant [and] defend against all claim or claims whatsoever.

From the books of mortgages in my office, part of the plantation now sold, to wit, eighteen arpents front, and six of the slaves above named, appear to be mortgaged in favor of the Consolidated Association of the Planters of Louisiana, to secure the sum of thirty-six thousand dollars, being the amount of twenty-two shares in the capital stock of the said company, of which the vendor is a subscriber. Said mortgage duly recorded, on the 30th of January, 1830, and of the effect of which mortgage said vendor obligates himself to warrant and defend the purchaser, and to procure the cancelling thereof in the shortest delay, at his own costs and expenses. There being no other mortgage of record in the name of the vendor. Thus agreed between the parties, &c.

Done and passed at the parish of Pointe Coupée, in my office, this fifteenth day of March, A. D. one thousand eight hundred and thirty-six, (1836,) in the presence of Joseph Sewell and Victor Mourain, witnesses duly qualified, who have hereunto set their names, with the parties and me, the judge, undersigned.

Signed, SOSTHAIN ALLAIN,
ROBERT R. BARROW,
A. ROBIN, *Judge.*

Signed, VIC. MOURAIN,
JOSEPH SEWELL.

State of Louisiana, parish of Pointe Coupee:

I, the undersigned, judge of the parish of Point Coupée, do hereby certify the foregoing to be a true copy of the original act on file in my office.

In testimony whereof, I have hereto set my hand and official seal, this 30th April, 1839.

SEAL. Signed, THOS. J. COOLEY,
Parish Judge.

Copy of sheriff's bill of sale, and mortgage contained therein.

Whereas I, J. C. Vanwickle, sheriff of the parish of Pointe Coupee, State of Louisiana, by virtue of an order of seizure and sale to me directed by the honorable the 4th district court, in and for the State and parish aforesaid, in the suit entitled Robert R. Barrow vs. Samuel John Carr, and known on the docket of said court by 1,072, ordering the sale

of the following described property in block: And, agreeable to said order of seizure and sale, I did seize on a certain tract of land, or plantation, having thirty-six arpents front on the river Mississippi, by the ordinary depth of forty arpents, bounded on one side by land of Pierre L. L'Hermite, and on the other side by land of William Taylor, with all and singular the buildings and improvements thereon, together with all the horses, oxen, sheep, cattle, plough, carts, and tools of every description now in use for the cultivation of said plantation; also the following named slaves: Neptune, 39 years old; Reuben, 24; Jerry, 31; Big Davy, 31; Priestley, 25, engineer, with a sore leg; Beverly, 29; Abraham, 39; Davy, 29; Cesar, 29; Ralph, 44; Charles, 34, blind of one eye; Lafleur, 39, with a rupture; Baptiste, 32; Tom, 34; Petit Louis, 20; Louis Mandango, 35; Thomas, 44; James Crow, 19; Ralph, 14; Charles, 16; Severe, 14; Cyprian, 9; Mary, 39; Daurette, 16; Fanny, 23; Anny, 34; Catharine, 45; Betsy, 29; Patty, 24, and her two children; Diana, 49; Suzanne, 29; Nancy, 30; Lucello, 27; Dorothe, 44, and her child; Cecile, 16; Sarah Ann, 14; Isabella, 44, with a sore leg; Fanny Bayon, 26, blind, and her three children; Therese, 7; Abraham, 29; Billy Hall, 29; Andrew, 34; James, 38; Joe, 25, Betsy, 23, and her child; Sylvey, 7; and Martha, 21 years; being the whole as described in the act of sale from Robert R. Barrows to Samuel J. Carr, passed before Louis T. Caire, notary public, on the 17th day of March, 1837, and recorded in the office of the parish judge of the parish of Pointe Coupee, and annexed to plaintiff's petition; which above described property, agreeable to the certificate from the recorder of mortgages, appears to be encumbered with a special mortgage in favor of Robert R. Barrow for the sum of one hundred six thousand three hundred and forty-six dollars and 19-100, on several notes payable on the 1st March, 1839, 1840, 1841, 1842, and 1843, said mortgage*d* recorded on the 15th day of April, 1837; also a judicial mortgage in favor of L. Humblot for the sum of one hundred and fifty dollars, with ten per centum interest from 6th November, 1837; and having posted up the advertizements in the French and English languages for the space of thirty full days, one at the court house, and three others at the most public places in the parish, and agreeable to said advertisements having exposed said above described property in block to public sale, according to law, Isaac T. Preston, for his brother John Preston, became the purchaser, for the sum of sixty-seven thousand five hundred dollars on the following terms: the purchaser assuming the payment of three notes, the first for the sum of twenty-one thousand three hundred and forty-nine dollars and 23-100, falling due 1st March, 1841; the second, for the sum of twenty-two thousand four hundred fifty-six dollars and twenty-two cents, and falling due 1st March, 1842; and the third, for the sum of twenty-three thousand five hundred and *and* sixty-three dollars and twenty-one cents, and falling due 1st March, 1843; amounting, together, to the sum of sixty-seven thousand three hundred and sixty-eight dollars and sixty-six cents, leaving a balance of one hundred and thirty-one dollars and thirty-four cents of the purchase money; which sum I acknowledge to

have received in cash; towards the cash payment and costs to pay the sum of thirty-nine thousand three hundred seventy-seven dollars and forty-nine cents, with five per cent. interest on the sum of $19,135 25, from the 4th March, 1839, until paid, and the like interest on the sum of $20,242 24, from the 4th March, 1840, until paid, and the costs of suit; and to give the purchaser a full and unincumbered title to said property, have raised the mortgages existing against the same, except the above sum of sixty-seven thousand three hundred sixty-eight dollars and 66-100 assumed by said purchaser.

Now, therefore, know all men by these presents that I, the said sheriff, do, in consideration of the premises, and by virtue of the act in such case made and provided, *do* grant, bargain, sell, assign, and set over to the said John S. Preston, his heirs and assigns, all the above described property, however reserving a special mortgage on the same for the payment of the three notes assumed by the purchaser, amounting to the sum of sixty-seven thousand three hundred sixty-eight dollars and 66-100, and all the right, title, and interest, or demand, which the said Samuel Jno. Carr had on the 10th day of July last past, or at any time since had in or to the said property, or any part thereof, to hold the same to the said John S. Preston, his heirs and assigns, for ever.

In testimony whereof, I have hereunto set my signature this, the 20th, day of August, in the year of our Lord 1840, and in the sixty-fifth year of the independence of the United States.

(Signed,) J. C. VANWICKLE, *Sheriff.*

STATE OF LOUISIANA, *parish of Pointe Coupee:*

Received 18th December, 1840.

I, the undersigned, clerk of the 4th judicial district court for the parish of Pointe Coupee, in the State of Louisiana, do hereby certify, that the foregoing bill of sale has been by me truly recorded on this day, in the record of sheriff's sales kept in my office, on pages 162 and 163.

In testimony of which, I have hereto set my signature, and affixed the seal of our said court, this 19th December, 1840.

(Signed,) A. BEEZON, *Clerk.*

STATE OF LOUISIANA, *parish of Pointe Coupee:*

I, the undersigned, judge of the parish of Pointe Coupee, and ex-officio recorder of mortgages therein, do hereby certify, that the foregoing sheriff's bill of sale, and the mortgage therein contained, was duly recorded in the book of conventional and legal mortgages kept in my office, on this day.

In testimony whereof, I have hereunto set my official signature and [SEAL.] seal, this twenty-sixth day of December, 1840.

(Signed,) THOS. J. COOLEY, *parish judge.*

Statement on sheriff's return.

BARROW vs. S. JNO. CARR. } No. 1,072.

Notes due and payable in cash - - -	$39,377 49
Interest on $19,135 25, from 4th March, 1839.	
Interest on $20,242 24, from 4th March, 1840.	
Mortgage existing on plantation and slaves to be assumed by the purchaser - - - -	67,368 66
Amount of taxes and costs, and other charges for negroes	983 52
Charges on plantation while under seizure in the possession of sheriff - - - - -	2,295 27
	$70,649 45
CR.	
Aug. 15th, 1840, by amount of the sale of the plantation, slaves, and stock, &c., to John S. Preston - -	67,500 00
Remaining due for costs and charges from defendant, also the above cash payment of - - - with interest as above.	3,147 45 39,377 49

(Signed,) J. C. VANWICKLE, *Sh'ff.*

And afterwards, to wit, on the 28th day of April, 1841, the following record was recorded:

JOHN S. PRESTON vs. GEORGE W. PHILLIPS. } No. 784.

In this case the arguments of counsel being concluded, the cause was submitted to the court, and the court took time to consider thereon.

And afterwards, to wit, on the 29th day of April, 1841, the following bill of exceptions was filed:

UNITED STATES OF AMERICA.

Circuit court thereof, holden at New Orleans, in and for the 9th judicial circuit and eastern district of Louisiana.

JOHN S. PRESTON vs. GEORGE W. PHILLIPS. } No. 784, April term, 1841.

Be it remembered that, on the trial of said term of the court, the following exceptions were taken and reserved on behalf of the defendant, and are now embodied in one bill, by consent of the court and the parties, and which is signed and sealed before the termination of the trial of the said cause.

1st. The defendant, by his attorney, offered to file document A as his peremptory exceptions founded in law; to the filing whereof the plaintiff's counsel objected, and their objection was sustained by the court; to which decision the defendant excepts.

This document was offered after the pleadings were read:

2nd. Before any evidence was offered by either of the parties in support of the several issues, on their respective parts to be maintained, the defendant's counsel moved the court that the clerk be directed to take down the testimony of all the witnesses whom either party should adduce on the trial, and to file all documentary proof received in evidence, and keep minutes thereof; but the court overruled the motion, and witnesses were examined without their testimony being taken down, and documentary proof received without being marked as filed, or minutes taken thereof; to which decision the defendant excepts.

3rd. The plaintiff offered in evidence the deposition of Robert R. Barrow, marked B, to the reception whereof the defendant objected; but the objection was overruled by the court, and the deposition was admitted in evidence; to which decision of the court the defendant excepts.

4th. The plaintiff offered in evidence the first, second, and third of the promissory notes described in the petition, together with the protests thereof, and the several certificates of the notary in relation to the manner and times in which he notified the plaintiff and defendant of the dishonor of the notes as they respectively matured. Whereupon the defendant objected to the admission of the said certificates, or any proof adduced for the purpose of, and leaving notice to the endorsers of, protest, as no such notices were alleged in the petition; the court overruled the objection, and admitted the evidence; and to its decision therein the defendant excepts.

5th. The plaintiff offered Louis T. Caire (the notary before whom the act of sale was passed that is described in the petition) as a witness to prove the allegations of the petition, and a verbal agreement between the plaintiff and the defendant, made before the passing of the act of sale, that, as between themselves, they would be equally liable as endorsers, as stated in the petition. And, also, to prove by him that the clause in the act of sale, setting forth said agreement, was inserted therein by the instruction of the plaintiff, in the presence of the defendant, and without any objection thereto on his part. Whereupon the defendant objected to the admission of such evidence; but the court overruled the objection, and admitted the evidence; and to its decision therein the defendant excepts.

6th. The plaintiff offered in evidence the copy of the act of sale described in the petition, and marked (C,) to the of which, and such parts thereof as were adduced for the purpose, and tended to prove any agreement between the plaintiff and the defendant, as to their equally liability between themselves, upon their several endorsements upon the promissory notes described in the petition, and to charge the defendant with any liability resulting therefrom; the defendant objected, but the court overruled the objection, and admitted the evidence; and to such, its decision, the defendant excepts.

7th. The plaintiff offered in evidence the record of the suit of Robert R. Barrow vs. S. John Carr, being the order of seizure and sale, and proceedings therein, relating to the seizure and sale of such of the property described in the petition and act of sale, as was situated and located in the parish of Pointe Coupee, Louisiana. The said record is marked (D,) to the admission of which record and proceedings the defendant objected, but the objection was overruled by the court; and to such, its decision, the defendant excepts.

8th. The plaintiff offered in evidence document marked (D,) purporting to be an act of sale from the sheriff of Pointe Coupee, adjudicating the property last mentioned to the plaintiff, as the purchaser at public sale; to the admission whereof the defendant objected, but the court overruled the objection; to which decision of the court the defendant excepts.

The defendant by his attorney, having reserved the foregoing several exceptions, as the occasions thereof severally arose in the course of the trial, and at the suggestion of the court, the drafting of separate bills of exceptions were dispensed with, and the general bill for the whole postponed, till the plaintiff's testimony was closed.

He now respectfully presents to the court this his bill of exceptions, embracing all the several points reserved, and prays the court to sign and seal the same, which is done accordingly.

(Signed,) J. McKINLEY, [SEAL.]
P. K. LAWRENCE. [SEAL.]

April 28th, 1841.

Peremptory exceptions referred to in bill of exceptions, marked as filed, same day.

Document A.

UNITED STATES OF AMERICA:

Circuit court of the U. States, being the 9th circuit thereof, and holden at New Orleans, in and for the eastern district of Louisiana.

JOHN S. PRESTON, vs. GEORGE W. PHILLIPS. } April term, 1841.

And now at said term came the defendant, George W. Phillips, by his attorney, and (not waiving, but insisting on his answer heretofore filed in this cause,) availing himself of the provisions of the Louisiana code of practice in that behalf, and as the same has been adopted by this honorable court, he here presents his peremptory exceptions, founded in law to the further maintenance of this suit.

And for causes of peremptory exception, he sets forth and assigns the following, to wit:

1st. The agreement stated in the petition to have been entered into by the plaintiff and defendant, is no where alleged to have been in writing, or signed by the parties, or embodied in any instrument of writing to which they were parties, or to which they, or either of them assented,

by their presence, or otherwise, at the time of the execution of any such instrument of writing, by those who may have been parties thereto.

2nd. The petition in no part alleges any or a sufficient consideration for the said supposed agreement, nor does it allege or show, that the said agreement imported in itself any or a sufficient consideration.

3rd. The said supposed agreement is at variance with, and in contradiction of, and seeks to change the liabilities and relations of the plaintiff and defendant to each other, in relation to certain contracts in writing, to which the petition alleges they are parties, by respectively signing their names on the backs of six several promissory notes, as first and second endorsers thereof.

4th. The petition, in no part of it, alleges, that either the plaintiff or the defendant were duly notified of the dishonor of any of the said promissory notes, which it alleges to have been protested for non-payment, as they severally matured, nor does the petition show in what manner the plaintiff was, or could have been, coerced to make the several payments, he alleges he has made.

5th. All the statements and allegations of the petitions in reference to any agreement or circumstance, out of which any liability of the defendant to the plaintiff is supposed to arise, are loose, vague, and indefinite, and insufficient in law to put the parties to their proofs upon the several issues of fact which the pleadings present.

Wherefore, and for divers other good reasons in this behalf, the defendant prays judgment of this honorable court upon the said petition, and the dismissal thereof, with a further judgment for costs in this behalf most unjustly sustained.

(Signed,) JANIN & BARTON,
Defendant's attorneys.

And afterwards, to wit, on the 29th day of April, 1841, the following motion in arrest of judgment, was filed.

UNITED STATES OF AMERICA:

Circuit court of the United States, holden at New Orleans, in and for the eastern district of Louisiana.

JOHN S. PRESTON, vs. GEORGE W. PHILLIPS. } April term, 1841.

And now comes the defendant, by his attorney, and prays the court to arrest the judgment in this case, and sets forth and assigns as grounds for the motion—

1st. That the plaintiff's petition does not allege that the agreement described therein, and out of which the defendant's liability is supposed to arise, was signed by either plaintiff or defendant, or that the same was in writing.

2nd. The petition does not allege any, or a sufficient, consideration for the agreement which it states to have been entered into by the defendant, to and with the plaintiff.

3rd. The agreement stated in the petition is at variance with, and in contradiction of, the contract of endorsements, which arises from the signatures of plaintiff and defendant as first and second endorsers, upon several promissory notes, which the petition alleges they signed as such.

4th. There is no allegation in the petition of notice or notices, being given either to plaintiff or defendant, of the dishonor or protest of any one of the said promissory notes, as they respectively matured.

5th. The evidence adduced at the trial, as shewn by the statement of facts, and the several documentary proofs to which it makes reference, is not sufficient in law to support the issues on the plaintiff's behalf to be maintained, or to authorize any judgment in favor of the plaintiff, and against the defendant.

6th. A trial of this cause by the court, and without the intervention of a jury, unless there had been an express waiver of record, is not authorised by the law regulating the practice of this court.

Wherefore, the defendant prays that the judgment be arrested, that the plaintiff take nothing by his plaint, that his petition be dismissed, and that the defendant may go hence without day, and recover of the plaintiff his costs in this behalf most wrongfully sustained.

(Signed,) S. BARTON, *def't atty.*

And afterwards, to wit, on the twenty-ninth day of April, 1841, the following judgment was recorded:

JOHN S. PRESTON, vs. GEORGE W. PHILLIPS. } No. 784.

The court having maturely considered this case, now order, adjudge, and decree, that judgment be entered up in favor of the plaintiff, John S. Preston, and against the defendant, George W. Phillips, for the sum of nineteen thousand six hundred and eighty-eight dollars and seventy-four cents, with interest of five per centum per annum, upon nine thousand five hundred and sixty-seven dollars and sixty-two cents thereof, from the fourth day of March, eighteen hundred and thirty-nine; and upon ten thousand one hundred and twenty-one dollars and twelve cents, from the fourth day of March, eighteen hundred and forty, till paid; for five dollars and twenty-five cents cost of protest, and costs of this suit.

And thereupon, the defendant's counsel moved an arrest of judgment, on the grounds now filed, which motion was ordered to be overruled.

Judgment entered 29th April, 1841; judgment signed 5th May, 1841.

(Signed,) P. K. LAWRENCE, *U. S. Judge.*

And afterwards, to wit, on the fifth day of May, eighteen hundred and forty-one, the following fieri facias was issued:

Circuit court of the United States for the 9th circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, that you demand from George W. Phil-

lips, the sum of nineteen thousand six hundred and eighty-eight dollars and seventy-four cents, with interest of five per centum per annum, upon nine thousand five hundred and sixty-seven dollars and sixty two cents thereof, from the fourth day of March, eighteen hundred and thirty-nine; and upon ten thousand one hundred and twenty-one dollars and twelve cents, from the fourth day of March, eighteen hundred and forty, till paid; for five dollars and twenty-five cents costs of protest, and costs of this suit.

Clerk's fees, $91 00.
Marshal's fees,

Cash, which John S. Preston, lately recovered by judgment of the circuit court of the United States, for the 9th circuit and eastern district of Louisiana; and if he shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said George W. Phillips, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said George W. Phillips, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said George W. Phillips, in your district, whereof he is owner, on the 29th day of April, 1841, into whose hands soever the same may have come. And that you have those moneys before our said court, to render to the said John S. Preston, for the judgment aforesaid, on the seventieth day from date, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fifth day of May, A. D. 1841, and 65th year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's Return.

Stayed same day by plaintiff's attorney.
5th May, 1841.

(Signed) ISAAC T. PRESTON.
(Signed) J. P. WALDEN,
D'y Marshal.

And afterwards, to wit, on the 8th day of October, in the year of our Lord eighteen hundred and forty-one, the following bond of appeal was filed:

Know all men by these presents, that we, George W. Phillips and A. A. Laforest, are held and firmly bound unto John S. Preston, his executors, administrators, and assigns, in the sum of two hundred dollars, for the payment whereof, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 9th day of October, in the year of our Lord one thousand eight hundred and forty-one.

Whereas, the above bound George W. Phillips this day filed a petition of appeal from a final judgment, rendered against him in the suit of John S. Preston and George W. Phillips, in the circuit court of the

United States, for the 9th circuit and eastern district of Louisiana, on the 5th day of May, 1841.

Now, the condition of the above obligation is such, that the above bound George W. Phillips shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said A. A. Laforet, surety, will be liable in his place for costs.

(Signed) LS. JANIN, *Att'y*,
For GEO. W. PHILLIPS, [SEAL.]
Per pro. A. A. LAFORET,
L. JANIN. [SEAL.]

To the honorable circuit court of the United States, for the ninth judicial circuit, eastern district of Louisiana:

The petition of George W. Phillips, of the parish of Assumption, and State of Louisiana, respectfully shows—

That, on the 5th of May last, your honorable court has rendered a final judgment in the suit of John S. Preston against your petitioner; that said judgment is for a sum of upwards of nineteen thousand dollars; and that your petitioner believes himself aggrieved thereby.

Therefore, petitioner prays to be allowed to appeal from said judgment to the honorable court of the United States, on giving security for costs.

(Signed) LS. JANIN, *Att'y for petitioner.*

Be it so. The appellants first executing a bond, with security, as required by law, in the sum of two hundred dollars. Said appeal returnable to the second Monday of January, 1842.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Clerk's Office, Circuit Court United States,
Ninth circuit, eastern district of Louisiana.

I, Duncan N. Hennen, clerk of the circuit court of the United States, in and for the eastern district of Louisiana, do hereby certify, that the foregoing seventy-three pages contain a full, faithful, and true transcript of the record and proceedings, together with all the proceedings and evidence adduced on the trial of the case of John S. Preston vs. George W. Phillips, No. 784, so far as the same now remains on the file in the said court.

In testimony whereof, I have hereunto signed my name, and affixed the seal of said court, at the city of New Orleans, this 30th day of November, in the year eighteen hundred and forty-one, and of [the] sixty-six[th] year of the independence of the United States.

[SEAL.]

DUNCAN N. HENNEN, *Clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, and one of the judges of the

circuit court of the United States, for the eastern district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, and that due faith and credit are due to his acts as such.

Witness my hand and seal, this day of November, eighteen hundred and forty-one.

[SEAL.]

THEO. H. McCALEB,
U. S. Judge.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, greeting:

[SEAL.]

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some one of you, between John S. Preston, of the State of South Carolina, and George W. Phillips, a manifest error hath happened, to the great damage of the said George W. Phillips, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, at the city of New Orleans, the 2d Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

DUNCAN N. HENNEN, *Clerk.*

The United States of America to John S. Preston, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 2d Monday of January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit, in and for the eastern district of Louisiana, wherein George W. Phillips [is] plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this eighth day of December, in the year of our Lord one thousand eight hundred and forty-one.

THEO. H. McCALEB, *U. S. Judge.*

Marshal's return to the above citation in error.

Served personally on the above named John S. Preston, same day, by handing the same to him in person, in the city of New Orleans and State of Louisiana aforesaid.

A. SIDNEY ROBERTSON, *U. S. M.*
By WM. K. STILES, *D'y U. S. M.*

Rules of the circuit court of the United States, eastern district of Louisiana, adopted 20th November, 1837:

Rule 1st. The mode of proceeding in all civil cases, those of admiralty jurisdiction excepted, shall be conformable to the provisions of the code of procedure of the State of Louisiana, and the acts of legislature of said State, heretofore passed, amendatory thereto.

Clerk's Office, circuit court United States of Louisiana,
Eastern district of Louisiana.

I hereby certify, that the foregoing rule was adopted by the said court, on the said twentieth day of November, eighteen hundred and thirty-seven; and I further certify, that the same has been ever since, and still continues, in full force.

Witness my hand and the seal of the court, at the said city of New Orleans, this twenty-seventh day of December, 1841.

[SEAL.] DUNCAN N. HENNEN, *Clerk.*

Filed, , 1844.